



**National Crime Prevention and Privacy Compact**  
**COMPACT COUNCIL MEETING**  
**ALEXANDRIA, VA**  
**OCTOBER 2-3, 2003**

**MINUTES**

Mr. Wilbur Rehmann, the Compact Council Chairman, called the Compact Council meeting to order at 9:00 a.m. on October 2, 2003, in the Presidential Ballroom of the Radisson Hotel, Old Town Alexandria, Alexandria, Virginia. Chairman Rehmann's opening remarks included comments regarding the benefits to the Council as a result of the State Compact Officers' involvement during Council meetings. Chairman Rehmann commented about the sharing of ideas and constructive criticism while discussing the issues and topics with the Council in an open forum. In Chairman Rehmann's final remarks as Council Chairman, he noted how the Council has superbly handled the discussions about the tough issues on the Council's agendas. As a result, the Council, since its first meeting in October 1999, has examined and resolved several of these tough issues. Chairman Rehmann expressed his appreciation and thanked everyone for their support during his tenure as Chairman.

Mr. Todd Commodore, FBI Compact Officer, called the roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance.

**State Compact Officers:**

- Lt. Col. Jeff Harmon, Maine State Police
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Major Mark Huguley, South Carolina Law Enforcement Division
- Ms. Debbie McKinney, Oklahoma State Bureau of Investigation  
(Proxy for Mr. Rusty Featherstone)
- SFC John H. O'Brien, New Jersey Division of State Police
- Mr. Wilbur Rehmann, Montana Department of Justice
- Ms. Diane Schenker, Alaska Department of Public Safety
- Mr. David Sim, Kansas Bureau of Investigation
- Ms. Donna Uzzell, Florida Department of Law Enforcement

**State/Local Criminal Justice Agency Representative:**

- Vacant

**Federal Noncriminal Justice Agency Representative:**

- Ms. Kathy Dillaman, Office of Personnel Management

**Federal Criminal Justice Agency Representative:**

- Ms. Winona Varnon, Transportation Security Administration

**Advisory Policy Board Representative:**

- Mr. Frank Sleeter, Sun Prairie Police Department, Sun Prairie, Wisconsin

**Federal Bureau of Investigation:**

- Mr. Monte Strait, FBI, CJIS Division (Proxy for Mr. Michael Kirkpatrick)

Meeting attendees in the gallery introduced themselves and the agency they represented  
(See Attachment #1).

The Council approved the minutes from the June 2003 meeting as its first order of business.

**Compact Council Action: Mr. David Sim made a motion to approve the June 2003 minutes. The motion was approved by acclamation.**

The Council held elections for Council Chairman and Vice-Chairman. Supervisory Special Agent (SSA) Monte Strait, FBI CJIS Division (proxy for Mr. Michael Kirkpatrick, Assistant Director in Charge, FBI CJIS Division), conducted the election for the new Council officers. SSA Strait reviewed Sections 7.2, 7.3, and 7.4 of the Council's Bylaws regarding elections and then opened the floor for nominations. Ms. Diane Schenker nominated Lt. Col. Jeff Harmon. Ms. Kathy Dillaman seconded the nomination. No other nominations were made for Chairman. Lt. Col. Harmon accepted the nomination.

**Compact Council Action: Ms. Donna Uzzell made a motion that Lt. Col. Harmon serve as the new Chairman of the Compact Council. The motion was seconded by Mr. Paul Heppner. Lt. Col. Harmon won the election by acclamation.**

SSA Strait congratulated Chairman Harmon on his selection as Council Chairman. He then turned the meeting over to Chairman Harmon to conduct the election for Vice-Chairman. Ms. Donna Uzzell nominated Major Mark Huguley. Ms. Kathy Dillaman nominated Mr. Paul Heppner. Major Huguley accepted the nomination. Mr. Paul Heppner declined the nomination.

**Compact Council Action: Ms. Donna Uzzell made a motion to close the nominations for Vice-Chairman. The motion was seconded by Ms. Diane Schenker. Major Huguley won the election by acclamation.**

Chairman Harmon congratulated Major Huguley on his being selected as Council Vice-Chairman.

Upon closing of the election, Chairman Harmon directed the Council to begin discussions on the agenda items.

**Topic #1      Standards Committee Report on Noncriminal Justice Outsourcing**

Chairman Harmon discussed the progress and status of the Standards Committee regarding the development of a security and management control standard to be used in conjunction with the noncriminal justice outsourcing rule (**See Attachment #2 for a copy of the PowerPoint presentation**). Chairman Harmon asked Mr. Robert McKeever, Maryland Department of Public Safety, and chairman of the Ad Hoc Committee, to provide comments on the proposed noncriminal justice outsourcing rule. (**See Attachment #3**). Mr. McKeever described non-substantive changes and language for possible inclusion in the proposed noncriminal justice outsourcing rule. The discussion resulted in additional language changes and a revised draft of the proposed noncriminal justice outsourcing rule. (**See Attachment #4**). The changes included:

In the introduction, the parenthesis around the abbreviation 'III' now follows the words "Interstate Identification Index".

- The phrase in paragraph (a) is now in parentheses that follows the word "standards" and the phrase "after consultation with the United States Attorney General" was inserted after the words 'Compact Council'.
- The phrase in paragraph (b) is now in parentheses that follows the word "standards" and "after consultation with the United States Attorney General" was inserted after the words 'Compact Council'.
- Paragraph (c) was changed to read as follows:
  - (c) Criminal history record information provided in response to III System record requests initiated by authorized governmental or nongovernmental agencies may be made available to contracting agencies or organizations manually or electronically, provided that such agencies or organizations shall not be permitted to have direct terminal access to the III System that would enable them to initiate record requests.
- Paragraph (d), after "ensure the security and confidentiality of the information; provide for audits," the following language was added, 'and sanctions.' Also after the word "Compact Council," and before the words "may require," the phrase 'consultation with the United States Attorney General' was inserted.

Major Mark Huguley commended Mr. McKeever, Mr. Woodard, and Mr. Moyer for their work preparing the initial draft of the proposed noncriminal justice outsourcing rule and for the revisions made during the Council meeting.

**Compact Council Action:** *Ms. Donna Uzzell made a motion to adopt the revised outsourcing rule as presented. The motion was seconded by Mr. Wilbur Rehmann. The motion carried.*

**Topic #2**      **Methodology of the Noncriminal Justice Agency Audit**

Ms. Adrienne Leach, FBI CJIS Audit Unit (CAU) discussed the methodology for Noncriminal Justice Agency (NCJA) audits. Ms. Leach provided a two-phased tentative time line for the implementation of NCJA audits for noncriminal justice agencies as follows:

**Phase I:**

From October through November 2003, the CAU planned the following:

- A. Finalize working papers for noncriminal justice audit pilot project, including educational material, information letters, letters explaining the audit, and the authority to complete the audits.
- B. The CAU would seek approval to conduct the pilot project of NCJA's receiving criminal history record information.

**Phase II:**

From February through October 2004, the CAU plans to test the audit methodology in four states. The NCJA audits will be patterned after the National Crime Information Center (NCIC) 2000 audits regarding the use, dissemination, and security of criminal history record information. When the NCJA audit implementation planned for October 2004 is finalized, the CAU plans to notify and explain the process to the CJIS APB and the Council.

The Council accepted the CAU Audit plan for information only with the intention of discussing it further at its next scheduled meeting.

**Compact Council Action:** *This topic was accepted as information only.*

**Topic #3**      **NFF Update**

Ms. Paula Barron, FBI CJIS Staff, presented the results of a survey sent to the Compact states asking about the status of NFF program participation (**See Attachment #5**). Ms. Barron summarized the reasons provided by the states for NFF program implementation delays as follows: (1) budget restraints, (2) staffing cuts, (3) hiring freezes, and (4) delays in state Automated Fingerprint Identification System technology upgrade projects. Ms. Barron explained that FBI CJIS has

implemented two significant Integrated Automated Fingerprint Identification System (IAFIS) enhancements to improve the quality of the NFF Program in the past year. One enhancement upgraded the telecommunications line and the second enhancement involved sending one complete electronic rap sheet. These two changes improved the efficiency of NFF rap sheets being returned to the requestor. Mrs. Barron stated that since overcoming these obstacles, the FBI is now better prepared technically to accommodate new states joining the NFF program.

Mr. Gary Barron, FBI CJIS Division, is now handling NFF transitions and any state interested should contact him at (304) 625-2714.

***Compact Council Action:*** *Major Mark Huguley made a motion that Chairman Harmon send a letter to all new State Compact Officers, requesting their time line for NFF participation. The motion was seconded by Mr. Wilbur Rehmann. The motion carried.*

**Topic #4**      **Standards Committee Report on the FBI NFF Qualification Requirements and Audit Criteria**

Chairman Harmon presented this topic. He provided the Council with recommendations to the FBI NFF Qualification Requirements and Audit Criteria from the Standards Committee Meeting held in August 2003. The recommendations were as follows:

1. Add the word "calendar" to the following state Qualification Requirement and associated Audit Criterion to clarify the time frame:

**State NFF Qualification Requirement - II (C)**

An NFF state shall conduct an audit of III record synchronization with the FBI at least twice a year to identify, analyze, and correct record discrepancies with 90 **calendar** days of audit tape receipt from the FBI. An NFF state shall maintain the discrepancy reports resulting from the last two synchronization tapes.

2. **State NFF Audit Criterion - II (C)**

*Verify that states maintain the discrepancy reports. Based on a representative sample from the discrepancies noted in the report, verify that the state has conducted, as a minimum, biannual synchronization audits of III records, and discrepancies have been corrected/resolved within 90 **calendar** days of tape receipt from the FBI.*

3. Delete the word "arrest" from the following State Qualification Requirement:

## **State Qualification Requirement - I (I)**

The ~~arrest~~ master fingerprint impressions maintained at the state central criminal history record repository shall include all ten fingers, noting amputation(s), scars, or missing fingers.

4. In the State Qualification Requirements/Audit Criteria, FBI Staff also recommends replacing the word "criminal" for "arrest" where it appears in the following phrases "arrest fingerprint impression(s), arrest fingerprint submission(s), or arrest fingerprint(s)."

***Compact Council Action:*** Ms. Donna Uzzell made a motion to approve changes 1, 2, and 3 and refer change 4 back to the Standards Committee for further evaluation. The motion was seconded by Mr. Paul Heppner.

## **ADDITIONAL ITEM**

Next, Chairman Harmon presented proposed changes from the United States (U.S.) Department of Justice (DOJ) on the following pending rules: (1) 28 Code of Federal Regulations (CFR), Section 901 - The Delayed Fingerprint Submission Rule, and (2) 28 CFR, Section 902 - The Dispute Adjudication Rule.

***Compact Council Action:*** Mr. Wilbur Rehmann made a motion to approve the recommended changes to 28 CFR, Section 901 as presented (See Attachment 6). The motion was seconded by Mr. Paul Heppner. The motion carried.

***Compact Council Action:*** Mr. Wilbur Rehmann made a motion to approve the recommended changes to 28 CFR 902.2 and 28 CFR 902.4 as presented (See Attachment 7). The motion was seconded by Mr. David Sim. The motion carried.

Ms. Barron updated the Council regarding the work on 28 CFR, Section 904, the Record Screening Rule. She explained the Council had approved the language in the rule with the understanding that the preamble language would be modified.

Next, Ms. Donna Uzzell discussed the changes to the proposed Sanctions Rule (See Attachment 8). She explained the importance of flexibility in the language of the Sanctions rule to be agreeable with the Council and the CJIS APB.

***Compact Council Action:*** Mr. Wilbur Rehmann made a motion to approve the Sanctions Rule regarding NFF qualifications as proposed by the Sanctions Committee. The Rule will come before the Compact for final passage at the next Compact Council meeting. The motion was seconded by SFC John O'Brien. The motion carried.

**Topic #5**      **Update from TSA to Discuss Implementation of Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)**

Mr. Justin Oberman, TSA, provided an overview of the Credentialing Program Office (CPO) of the Transportation Security Administration (TSA), which Mr. Oberman manages. The TSA created the CPO in May 2003. The CPO is responsible for the following initiatives:

1. Personnel security for the whole TSA work force. This includes conducting background checks, issuing security clearances and everything associated with managing the security of a work force of nearly 60,000 people.
2. Aviation industry background checks (up to one million workers in this industry may be involved).
3. HAZMAT Materials Endorsement (HME) for hazmat drivers.
4. The register traveler program (conducting background checks on people who fly) to facilitate negotiating security checkpoints quickly and more efficiently.
5. Establish common badge and credentials for law enforcement officers to fly armed. Officials identified this as a security issue prior to the events of 911. The TSA is concerned someone may simply establish they are law enforcement by showing a badge and credential at an airport security checkpoint and board an airplane as an armed official without actually being qualified to do so. However, the 18,000 law enforcement agencies in the United States presents a training problem for the TSA. The TSA must train 48,000 screeners to identify each unique badge and credential as official.
6. The Transportation Worker Identification Credentials (TWIC) program. Currently, the TWIC program and the CPO have an interconnected relationship, but remain as separate entities within the TSA. Over time the TWIC program and the CPO will merge and become one office, the CPO. They plan to present prototypes on both the east and west coasts of the US and have been in the process of establishing a work agreement with the State of Florida, who is planning to implement a credentialing station at the ports.

Mr. Oberman informed the Council that he did not have any news regarding the November 3, 2003 deadline for HAZMAT background checks. Mr. Oberman reaffirmed his organization's mission statement as identifying potential terrorist threats attempting to gain employment in the transportation industry. Mr. Oberman addressed how standards govern the capture of fingerprints, methods for submitting fingerprints to the FBI and the method of receiving results. Mr. Oberman explained that the TSA will seek the guidance of the FBI, the Council and the states regarding fingerprint standards and fingerprint technology. The TSA is not asking the FBI to reinvent the wheel and is aware that the

Council and other members of the criminal justice community are more experienced in this field than the TSA. Mr. Oberman discussed the standards to be used when defining disqualification criteria for HAZMAT licensing. Mr. Oberman mentioned that some states recently enacted statutes and signed bills to prohibit issuing HAZMAT endorsements after the November 3, 2003 deadline. Mr. Oberman questioned if this was the case and, if so, the TSA would like to obtain copies of these bills and state statutes.

Next, Mr. John Berry, Program Manager for the TSA HAZMAT Program presented information to the Council about the status of the HAZMAT Background Check Program. (**See Attachment #9**). Mr. Berry showed that the TSA is attempting to establish innovative methods to work with the states to meet the intent of the USA PATRIOT Act and, at the same time, personalize it to fit a particular state's needs. Mr. Berry explained the TSA's three phase approach as follows.

Phase One - Biographical data checks using existing information.

Phase Two - Work with selected states or a small number of states in a test program or a prototype phase. They would like to select states with the best infrastructure and place them in this program along with some states whose infrastructure is not suited for this to learn and move toward full implementation in the final phase. The method of selecting the states has yet to be determined. Mr. Berry felt confident that TSA would meet the deadline.

Phase Three - Full implementation.

**Compact Council Action:** *This topic was accepted as information only.*

**Topic #6**      **Standards Committee Report on the Ability to Search On-line Civil File for Criminal Background Checks of Applicants for Positions of Trust**

Chairman Harmon provided the Standards Committee report about fingerprint searches of the online civil fingerprint file and retaining fingerprint submissions in the online civil file. The Standards Committee felt it was premature for any recommendation on this topic. The Council discussed and questioned what entities, or groups, would be submitting fingerprints to be searched against the online civil fingerprint file and, of course, for what purpose(s). The Council also discussed retention of the civil fingerprints and the purpose(s) for retention.

**Compact Council Action:** *The Council took no action on this topic. The Standards Committee had recommended that further work be done by staff on the concept of operation relative to the use of the online civil file, also a proposal relative to the retention of the prints and what purposes and uses will be made of them.*



## **Topic #7**      **Sanctions Committee Report**

Ms. Donna Uzzell, Florida Department of Law Enforcement, provided handouts of the proposed Sanctions rule with the suggested changes from the Sanctions Subcommittee noted since the Council last examined the Sanctions rule. Ms. Uzzell provided information about changes and clarification relating to the entities responsible for imposing sanctions which were discussed during a conference call with the chairman of the APB Sanctions Committee and some members the Council's Sanctions Committee.

The Sanctions Subcommittee met on 10/2/2003 following the Compact Council meeting and discussed the audit methodology for the Compact Council, particularly focusing on the provisions in the Compact that the FBI must follow. Ms. Uzzell mentioned that she would like all comments to be sent to Mr. Todd Commodore, FBI Compact Council Officer. Once Mr. Commodore receives all the comments, the Council's Sanctions Subcommittee planned a telephone conference call to discuss and incorporate the comments. Mr. Commodore asked for comments to be sent to him by November 5, 2003. The Sanctions Subcommittee will provide a new document regarding the composition of the audit team, at the next Compact Council meeting.

Ms. Adrienne Leach, FBI CJIS Division Audit Staff, provided an overview of the FBI NFF Audit Methodology (**See Attachment #10**). Ms. Uzzell requested that everyone review the FBI NFF Audit Methodology document to ensure the appropriate information is included to produce an effective document. The document will be presented to the CJIS APB Subcommittee meetings for proper coordination between the CJIS APB and the Council.

Mr. Wilbur Rehmann commended Ms. Uzzell and the Sanctions Committee for the work they have accomplished regarding the Sanctions rule.

***Compact Council Action: The Sanctions Rule regarding NFF Audit Methodology will be presented at the next Compact Council meeting for approval.***

## **Topic #8**      **Legislative Update**

Mr. Danny Moye, FBI CJIS Division presented this topic (**See Attachment #11**). Mr. Moye reviewed Public Law 108-36, Keeping Children and Families Safe Act of 2003 which was signed into law on June 25, 2003. This bill provides that, not later than two years after the enactment of this Act, those states obtaining grants for child abuse and neglect prevention and treatment programs have provisions and procedures in place for requiring criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household. The law does not state how these background checks will be conducted.

Mr. Moyer discussed the Chemical Facility Security Act of 2003. This bill would require the Under Secretary for Border and Transportation Security to implement a plan to ensure cargo security for all cargo entering the United States, or cargo moving via intrastate or interstate. This bill would require background checks on all cargo handlers.

The International Marriage Broker Regulation Act of 2003 would require that clients of an international marriage broker have a criminal background check conducted to inform a potential spouse of prior arrests, domestic violence, etc. The visa petitioner would also be required to undergo a national background check.

Mr. Moyer discussed the Detectives Nemorin and Andrews Anti-Gun Trafficking Act of 2003. This would mandate that the FBI provide access to the NCIC Gun File for purposes of allowing Bureau of Alcohol, Tobacco and Firearms to trace a gun. Within two years of enactment of this proposed legislation, all Federal Firearms Licensee's enrolled in the National Instant Criminal Background Check System (NICS) would be able to conduct a search of the NCIC Gun File prior to accepting a firearm from an unlicensed person as security for a loan.

The last legislative item covered was the Citizens' Protection in Federal Databases Act. This legislation would require the Attorney General and the FBI, along with other federal agencies, to submit a report containing detailed descriptions of any use of a database that; (1) is under the control of a non-Federal entity, or (2) information that was acquired by another federal agency for purposes other than national security, intelligence, or law enforcement. No department, agency, or federal employee may conduct a search based on a hypothetical scenario that someone may commit a crime or pose a threat to national security. A "database" is defined as a collection of information including an individual's name, identifying number, or other specific identifiers such as fingerprints, photographs, voice prints, or other biometric features.

Major Mark Huguley explained a situation which involved the U.S. Air Force Office of Special Investigations at the Charleston Air Force Base. The officials at the Air Force Base wanted to know if they could conduct III System name checks for contractors working in federal facilities, in this case a military base. Major Huguley posed the question of whether security access checks for federal buildings would be justified as criminal justice purpose checks.

Mr. Moyer explained these checks might be noncriminal justice type checks, however, existing CJIS APB approved policy authorizes this type of contractor background checks as long as fingerprints are submitted. After the discussion, it was decided that a staff paper discussing the CJIS policy would be presented at the Standards Committee meeting.

**Compact Council Action: The legislative update was accepted as information only. It was recommended that FBI staff present a topic paper at the next Council meeting discussing the issue of security access checks per the above mentioned discussion.**

**Topic #9**      **Status Update on the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003**

Mr. Allen Nash, FBI CJIS Division presented a status of the PROTECT Act (**See Attachment #12**). The CJIS Division implemented the pilot program to support the PROTECT Act on July 29, 2003 and consists of two parts, a state pilot program and a child safety pilot program. Three volunteer organizations were designated specifically by the PROTECT Act to participate in the pilot program. They were the Boys and Girls Club of America, the National Mentoring Partnership, and the National Council of Youth Sports who designated the Little League Baseball, Pop Warner Youth Football and the National Soccer Association to participate in the program. The PROTECT Act required the Attorney General to designate three states to participate in the pilot program. The three states chosen, based on a survey of the 50 states, were Tennessee, Virginia, and Montana, with each operating under a different model.

For the first model, Tennessee is requiring the volunteer organizations to register with the Tennessee Bureau of Investigation (TBI) to participate in the program. The volunteer organization must contact Sylvan/Identix to establish its account. Thereafter, when a prospective volunteer wants to work with that organization or qualified entity, the individual must contact Sylvan/Identix and schedule a time to be fingerprinted. All prospective volunteers will be fingerprinted on Live Scan fingerprint capture devices and the fingerprints will be submitted to the TBI and then to the FBI electronically. This is the end-to-end electronic process model. TBI agreed to conduct fitness determinations using the fitness criteria established by the National Center for Missing and Exploited Children (NCMEC) and the volunteer organizations.

For the second model, Virginia has a registration process for the volunteer organizations to establish account information. The Virginia State Police are required to take the fingerprints. They will process the state background checks and submit the fingerprints to the FBI electronically. The FBI will provide the responses to the Virginia State Police who will make the fitness determinations and notify the volunteer organizations manually by mail.

For the third model, in Montana, the volunteer organizations' applicants must register. The applicants will be fingerprinted by the local police department. The fingerprint cards will be mailed to the Montana Department of Justice (DOJ) who will search the Western Identification Network (WIN). If Montana DOJ has an identification from the fingerprint submitted to WIN, Montana DOJ may use III to get the CHRI using purpose code "I". Montana DOJ will forward the CHRI to NCMEC who will make the fitness determination and send the results to the Montana DOJ who will notify the volunteer organizations. When the fingerprint submission results in a no record found at the WIN, Montana DOJ will forward the fingerprint submission to the FBI for a national check. The response will be sent to the Montana DOJ who will forward it to NCMEC for the fitness determination and return the fitness determination results to the Montana DOJ to notify the volunteer organizations.

The Boys and Girls Club of America wanted a model where fingerprint cards were submitted through a channeling agency. In the survey, the states were asked about serving as a channeling agency. The states indicated no interest in serving as a channeling agency. The Office of Personnel Management (OPM) agreed to serve as a channeling agency for the Boys and Girls Club of America. The Boys and Girls Club of America will submit fingerprint cards through OPM who will scan them electronically or forward the fingerprint card to the FBI. The FBI will conduct a national criminal history check and send the CHRI to NCMEC to make the fitness determination and notify the local clubs.

In July 2003, the FBI met with representatives from the volunteer organizations to explain the FBI's fingerprint business practices, such as the method(s) fingerprint cards are submitted, billing procedures and practices, the benefits of using a channeling agency, and the FBI's wish to have a central billing agency. The FBI agreed to allow the Boys and Girls Club the ability to submit the fingerprint cards directly to the FBI with payment. The U.S. Treasury Department is piloting a new system, called paper check conversion, and they plan to provide equipment to the FBI at no charge during this pilot for the FBI to process fingerprint cards with direct payments.

The national office of the Boys and Girls Club of America, located in Atlanta, Georgia, will choose the clubs that will participate in the pilot program. The National Mentoring Partnership will serve as the national headquarters and serve as the channeling agency for their member organizations. The FBI has provided card scanning equipment, software, a modem, and encryptor to them to submit fingerprint cards electronically to the FBI. The National Mentoring Partnership Program has created a web site for their organizations to register and enroll online. The web site can be used to track the status of their fingerprint submissions, whether they were received by the National Mentoring Partnership, the FBI, or if their response was received from NCMEC. An online manual is available describing the process.

Next, Mr. Nash discussed the fitness criteria that NCMEC will use in its fitness determinations. NCMEC and the volunteer organizations agreed to the criteria for fitness determinations. Based on the criteria, an organization will receive one of the following responses:

- (1) Green light - meets criteria, which means no felonies or no record at all;
- (2) Red light - they have been convicted of one the criterion crimes, they are under pending indictment, or are wanted for one of the crimes;
- (3) Yellow light - there is a criterion offense in their record without a disposition and no determination can be made.

A civil applicant study is being conducted involving CHRI returned as a result of civil background checks. This study will examine the date of the arrests, the type of arrests, the arrest charge and whether or not the person was arrested in the same state they applied for the volunteer or applicant position. Mr. Nash explained the FBI would be evaluating public and private sources since

many volunteer organizations rely on public databases, such as Choice Point or other sources for conducting background checks. The FBI would like to determine if these databases can provide supplemental information that is equal to or better than what the organizations currently receive.

The PROTECT Act also requires the Attorney General to conduct a feasibility study, primarily to examine methods for improving the process of conducting background checks on prospective employees and volunteers of organizations that provide care to children, the elderly, or the disabled. The current state of fingerprint capture and processing at the state and local level is one of the categories to be studied. Fifty surveys were distributed in May 2003 and 40 responses were received. Mr. Nash provided preliminary results.

Mr. Nash estimated that 26 million volunteers would be fingerprinted under this program. Based on the findings of the study, an interim report is due to Congress at the end of October 2003. Recommendations for improving the process of conducting background checks on prospective volunteers and employees is also due at that time.

**Compact Council Action: This topic was accepted for information only. The Council did request that Mr. Danny Moye, FBI CJIS Division, provide the Council with information on the issue of waiver. The Council also requested that a report be given at the next Compact Council Standards Committee meeting and at the next Compact Council meeting regarding the status of the study of flat fingerprints.**

The meeting was adjourned at 12 noon.

Compact Council Meeting  
October 2-3, 2003  
Alexandria, VA

GALLERY ATTENDEE LIST

Lana Adams, Office of Personnel Management  
Robert Armstrong, Colorado Bureau of Investigation  
Thomas Barrick, West Virginia State Police  
Paula Barron, FBI CJIS Division  
Gary Barron, FBI CJIS Division  
Curtis Bass, Mississippi Department of Public Safety  
Thomas Berkley, Pearson Government Solutions  
John Berry, Transportation Security Administration  
Evelyn Best, Metropolitan Police Department  
David Bolme, Sylvan/Identix Fingerprinting Centers, LLC  
George Boraiko, "The Ashdale Group, Inc."  
Kelly Buck, PERSEREC  
Frank Campbel, Department of Justice  
William Casey, Boston Police Department  
Debbie Chapman, FBI CJIS Division  
Hugh Collins, Louisiana Supreme Court  
Michael Corsaro, West Virginia State Police  
Elaine Cropper, Cropper & Associates, Ltd  
Jan Dempsey, Colorado Bureau of Investigation  
Martin Feldmann, Ohio Bureau of Criminal Identification & Investigation  
James Gerst, FBI CJIS Division  
Eric Gormsen, Department of Justice  
Freddie Graham, TSA  
James Gray, Federal Bureau of Investigation  
Brent Gulick, Iridian Technology  
Ron Hawley, SEARCH  
Peter Higgins, Higgins-Hermansen Group, LLC  
Kathleen Higgins, Higgins-Hermansen Group, LLC  
Robert Holloran, National Background Data, LLC  
John Jesernik, Illinois State Police  
Theresa Johnson, Metropolitan Police Department  
Eric Juttelstad, Lockheed Martin  
James Kessler, Wachovia Corporation  
Eric Lapp, National Background Check, Inc.

Adrienne Leach, FBI CJIS Division  
David Leibowitz, Maryland Dept. of Public Safety & Correctional Services  
Julie LeTourneau, Minnesota Bureau of Criminal Apprehension  
Kevin Lewis, American Association of Motor Vehicle Administrators  
Angell Magnani, Iowa Department of Public Safety  
Timothy McGrail, Missouri State Highway Patrol  
Robert McKeever, Maryland Department of Public Safety and Correctional Services  
Marlene Michaels, FBI CJIS Division  
Kathy Minchew, Pearson Government Solutions  
Danny Moye, FBI CJIS Division  
Allen Nash, FBI CJIS Division  
Justin Oberman, Transportation Security Administration  
Kimberly Parsons, FBI CJIS Division  
Ken Paul, Virginia State Police  
Mike Pearson, Smiths-Heimann  
Jerome Pender, FBI CJIS Division  
Scott Phillips, FBI CJIS Division  
Michael Powers, Biometric Information Management  
Charlie Pruitt, Arkansas Crime Information Center  
Daryl Riersgard, Nevada Highway Patrol  
Pam Ritchey, Iowa Division of Criminal Investigation  
Andree Rose, PERSEREC/Northrop Grumman  
Judi Schneider, South Dakota Office of the Attorney General  
Carole Shelton, Criminal Justice Information Services  
Kim Smith, FBI CJIS Division  
Jay Stanley, American Civil Liberties Union Foundation  
Robin Stark, FBI CJIS Division  
June Still, Tennessee Bureau of Investigation  
Michael Timmerman, Arizona Department of Public Safety  
T.W. Turner, Virginia State Police  
Norma Ueno, Hawaii Criminal Justice Data Center  
Wilma Westfall, FBI CJIS Division  
Barbara Wiles, FBI CJIS Division  
Jon Williams, FBI CJIS Division  
Paul Woodard, SEARCH Group, Inc.  
Michael Woodson, Connecticut Department of Public Safety  
Martha Wright, Florida Department of Law Enforcement

# Compact Council

## October 2, 2003

Standards Committee Briefing on  
Proposed Security Standards

### Standards Committee Task

- Development of a Security and Management Control Standard for use in conjunction with the Outsourcing Rule



## Draft Rule

- Except as prohibited in paragraph(c), criminal history record information obtained from the Interstate Identification Index System (III) for non-criminal justice purposes may be made available:
- (a) To a governmental agency pursuant to a contractual agreement under which the agency performs activities or functions for another governmental agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the Attorney General. The contractual agreement must incorporate by reference the security and management control standards approved by the Compact Council identified in paragraph (d); and
- (b) To a private contractor, or other nongovernmental agency or organization pursuant to a contractual agreement under which the agency or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a) or for a nongovernmental agency authorized to obtain such information by federal statute or executive order. The contractual agreement must incorporate by reference the security and management control standards approved by the Compact Council identified in paragraph (d).
- (c) Criminal history record information may be made available to contracting agencies or organizations manually or electronically, provided that such agencies or organizations shall not be permitted to have direct terminal access to the III System.
- (d) The security and management control standards shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided, prohibit retention and/or re-dissemination of the information unless specifically authorized in the security and management control standards; ensure the security and confidentiality of the information; provide for sanctions, and contain such other provisions as the Compact Council may require.

## Scope

- Non-criminal justice indirect access
- Direct non-criminal justice access, purpose codes “X” and “I”, out of scope
- Temporarily set aside technical standards

## Assumptions

- The standards for outsourced non-criminal justice recipients should, at a minimum, be equivalent to the standards for current non-criminal justice recipients
- If the standards for outsourced non-criminal justice recipients are to exceed the standards for current non-criminal justice recipients we should first review the current standards to ensure that they are sufficient

## Risk Assessment

- Direct Access
  - ◆ “Anonymous” checks
  - ◆ Inappropriate dissemination
- Indirect Access
  - ◆ Inappropriate dissemination

## Review of Standards

- Criminal Justice
- Criminal Justice Contractor
- Non-Criminal Justice

## Policy Considerations

- Additions to current NCJ standards?
- Other considerations
  - ◆ Contract
  - ◆ Personnel screening
  - ◆ Physical security
  - ◆ Ownership of the records
  - ◆ Record retention
  - ◆ Identification of participants
  - ◆ Audit
  - ◆ Sanctions

## Contract

- Must legally bind the parties
  - ◆ Contract, inter-governmental agreement, service level agreement etc.
- Standard incorporated by reference
  - ◆ Is baseline, may not be modified
  - ◆ Contracting party may add additional requirements
- Sub-contracting is permissible
- Authorized recipient responsible for contractor and any sub-contractors

## Personnel Screening

- Authorized recipient must conduct background screening pursuant to any applicable statute or rule
- At a minimum contractor must conduct the same level of background screening that the authorized recipient applies to their staff that handle III records
- May require enactment of a qualifying 92-544 statute

## Physical Security

- Physical security standard must provide for safeguards to prevent unauthorized access to III records while in the possession of a contractor
- Requirement must be specified in the contract

## Ownership of the Records

- Authorized recipient maintains ownership of the records
- Dissemination of III records by a contractor is prohibited without the express consent of the authorized recipient

## Record Retention

- Retention of III records by a contractor is limited to the period necessary for the adjudicatory process
  - ◆ May include activities such as record screening and appeal hearings
- Limitations must be specified in the contract

## Identification of the Participants

- Each authorized recipient must be identified by an ORI or state assigned identifier
- Each contractor or sub-contractor must be uniquely identified (EIN?)
- Request via the state identification bureau
  - ◆ Authorized recipient notifies compact officer/SIB, who in turn notifies FBI Compact Officer
- Request via federal agency/channeler
  - ◆ Authorized recipient notifies FBI Compact Officer

## Audit

- Purpose is to detect unauthorized request or unauthorized use of data provided for an authorized purpose
- Triennial audit cycle
- Customary decentralized structure
  - ◆ CJIS Audit Unit audits SIB or federal agency/channeler reports to Compact Council
  - ◆ SIB or federal agency/channeler audits authorized recipient
- SIB responsible for audit irrespective of contractor location

## Audit Registry

- Registry of audit findings
  - ◆ Searchable by contractor identification number
  - ◆ Contains audit findings related to contractor performance
  - ◆ Used by authorized recipients, SIBs, federal agencies, CC Sanctions Committee
  - ◆ Used to bar contractors that violate contractual provisions

## Sanctions

- Deferred to Sanctions Committee

## Audit Implementation

- State requirement
  - ◆ Require certification of compliance review by authorized recipient within 90 days of execution of contract by AR
  - ◆ Implement state audit program for authorized recipients engaged in outsourcing within one year
  - ◆ Implement state audit program for all authorized recipients within three years, annual extensions possible for cause, maximum extension of three years (six years total)



# Audit Implementation

## ■ Federal Requirement

- ◆ Require certification of compliance review by authorized recipient within 90 days of execution of contract by AR
- ◆ Implement federal audit program for federal agencies engaged in outsourcing as well as channelers within one year
- ◆ Implement federal audit program for all authorized recipients within three years, annual extensions possible for cause, maximum extension of three years (six years total)

OUTSOURCING/PRIVATIZATION PROPOSAL – WORKING DRAFT  
9-25-03

Except as prohibited in paragraph(c), criminal history record information obtained from the Interstate Identification Index (III) System for noncriminal justice purposes may be made available:

- (a) To a governmental agency pursuant to a contractual agreement under which the agency performs activities or functions for another governmental agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the Attorney General. The contractual agreement must incorporate by reference the security and management control standards approved by the Compact Council identified in paragraph (d); and
- (b) To a private contractor, or other nongovernmental agency or organization pursuant to a contractual agreement under which the agency or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a) or for a nongovernmental agency authorized to obtain such information by federal statute or executive order. The contractual agreement must incorporate by reference the security and management control standards approved by the Compact Council identified in paragraph (d).
- (c) Criminal history record information may be made available to contracting agencies or organizations manually or electronically, provided that such agencies or organizations shall not be permitted to have direct terminal access to the III System.
- (d) The security and management control standards shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided, prohibit retention and/or re-dissemination of the information unless specifically authorized in the security and management control standards; ensure the security and confidentiality of the information; provide for sanctions, and contain such other provisions as the Compact Council may require

## OUTSOURCING/PRIVATIZATION PROPOSAL – WORKING DRAFT 10-2-03

Except as prohibited in paragraph(c), criminal history record information obtained from the Interstate Identification Index (III) System for noncriminal justice purposes may be made available:

(a) To a governmental agency pursuant to a contractual agreement under which the agency performs activities or functions for another governmental agency that is authorized to obtain criminal history record information by a federal statute, federal executive order or a state statute that has been approved by the Attorney General. The contractual agreement must incorporate by reference the security and management control standards (identified in paragraph (d)) approved by the Compact Council after consultation with the United States Attorney General; and

(b) To a private contractor, or other nongovernmental agency or organization pursuant to a contractual agreement under which the agency or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a) or for a nongovernmental agency authorized to obtain such information by federal statute or executive order. The contractual agreement must incorporate by reference the security and management control standards (identified in paragraph (d)) approved by the Compact Council after consultation with the United States Attorney General.

(c) Criminal history record information provided in response to III System record requests initiated by authorized governmental or nongovernmental agencies may be made available to contracting agencies or organizations manually or electronically, provided that such agencies or organizations shall not be permitted to have direct terminal access to the III System that would enable them to initiate record requests.

(d) The security and management control standards shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided; prohibit retention and/or re-dissemination of the information unless specifically authorized in the security and management control standards; ensure the security and confidentiality of the information; provide for audits and sanctions; and contain such other provisions as the Compact Council, after consultation with the United States Attorney General, may require.

## Compact States National Fingerprint File Program Participation Status

Compact State	Ratification Date	NFF Onsite Review Date	NFF Participation Date	Projected NFF Participation Date
<b>MONTANA</b>	3/31/1999	3/14-15/2000	<b>9/1/2002</b>	N/A
<b>Georgia</b>	4/28/1999	1/14-15/2004 (tentative)		TBD
<b>Nevada</b>	5/14/1999	2/23-24/2000		2nd/3rd Qtr 2004
<b>FLORIDA</b>	6/8/1999	N/A	<b>First NFF Pilot State - 4/21/1991</b>	N/A
<b>Colorado</b>	3/10/2000	8/7-9/2001		January 2004
<b>Iowa</b>	4/7/2000	3/25-26/2003		Late 2004 or early 2005
<b>Connecticut</b>	6/1/2000	8/21-23/2001		4th Qtr 2005
<b>South Carolina</b>	6/22/2000	9/24-25/2003		4th Qtr 2004
<b>Arkansas</b>	2/21/2001	Requested midyear 2004.		TBD
<b>Kansas</b>	4/19/2001			TBD
<b>Oklahoma</b>	5/24/2001	9/16-17/2002		<b>11/2/2003</b>
<b>Maine</b>	6/13/2001	8/27/28/2001		Midyear 2004
<b>Alaska</b>	9/1/2001			
<b>NEW JERSEY</b>	1/5/2002	5/24-25/1995	<b>Joined NFF Pilot on 9/17/1995.</b>	N/A
<b>Minnesota</b>	8/1/2002			TBD
<b>Arizona</b>	4/29/2002	Requested early 2004.		TBD
<b>Tennessee</b>	5/28/2003			TBD
<b>NORTH CAROLINA</b>	6/19/2003	6/24-25/1992	<b>Joined NFF Pilot on 2/14/1993.</b>	N/A
<b>New Hampshire</b>	6/30/2003			TBD
<b>Missouri</b>	8/23/2003			TBD

Note: Oregon joined the NFF Pilot Program on 5/1/1994. Compact legislation has been introduced in Oregon, but not yet ratified. Oregon continues NFF participation under a Memorandum of Understanding with the FBI CJIS Division.

## List of Subjects in 28 CFR Part 901

Crime, Health, Privacy, Safety

Accordingly, the Compact Council amends Part 901 to read as follows:

### Part 901 -- FINGERPRINT SUBMISSION REQUIREMENTS

1. Amend Section 901.3 to add a sentence to the end of paragraph (b) and to add paragraph (d) to read as follows:

#### Sec. 901.3 Approval of Delayed Fingerprint Submission Request

\*\*\*\*\*

(b) \*\*\* For the purposes of this rule, "time frame" means the number of days that elapse between the date on which the name search was conducted and (1) the date on which the state repository either positively identifies the fingerprint subject or forwards the fingerprints to the FBI or (2) the date a Federal agency forwards the fingerprints to the FBI.

(c) \*\*\*

(d) Part 901 is also applicable to any authorized federal agency ~~pursuant to Title 28, United States Code, Section 534, for purposes approved by the Compact Council,~~ provided that name-based checks are conducted by the agency's law enforcement component or by another law enforcement agency. ~~A federal agency may submit its request~~

~~for delayed submissions by forwarding an application to the  
FBI's Compact Officer.~~

2. Amend part 901 by adding Sections 901.4 and 901.5  
to read as follows:

Sec. 901.4 Audits

(a) Audits of authorized state agencies that access  
the III System shall be conducted by the state's Compact  
Officer ~~or, in~~ absence of a Compact Officer, the chief  
administrator for the criminal history record repository.~~or~~  
~~t~~The responsible federal service coordinator shall ensure  
that similar audits are conducted of authorized ~~state or~~  
federal agencies. Such audits shall be conducted to verify  
adherence to the provisions of Part 901 and the FBI's  
Criminal Justice Information Services Security Policy.

(b) Authorized agencies shall cause to be collected an  
appropriate record of each instance of III System access  
through a manual or electronic log. The log shall be  
maintained for a minimum one-year period to facilitate the  
audits and compliance reviews. Such records shall be  
maintained in accordance with the CJIS Security Policy.

(c) ~~Additionally,~~ The audit and compliance reviews  
must include mechanisms to determine whether fingerprints  
were submitted within the time frame specified by the  
Compact Council.

(d) In addition to the audits as stated above, the FBI CJIS Audit staff shall also conduct routine systematic compliance reviews of state repositories, federal agencies, and as necessary other authorized III System user agencies.

§ 901.5 Sanction for noncompliance

The Compact Council, or the FBI in consultation with the Compact Council, may impose sanctions in accordance with rules, procedures, or standards as established by the Council. The approval for access to criminal history record information systems **for noncriminal justice purposes** is subject to cancellation or discontinuance for violation of the National Crime Prevention and Privacy Compact Act, failure to comply with the provisions of Part 901, or failure to comply with the FBI Criminal Justice Information Services Security Policy. The state's Compact Officer, the chief administrator of the criminal history record repository or the Federal Service Coordinator **as applicable** may take similar actions against a state or federal agency for failure to comply with applicable security policies.

Dated: \_\_\_\_\_

Wilbur Rehmann

Compact Council Chairman

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

**List of Subjects in 28 CFR Part 902**

Administrative Practice and Procedure

Accordingly, Chapter IX of Title 28 Code of Federal Regulations is amended by adding Part 902 to read as follows:

**PART 902 -- DISPUTE ADJUDICATION PROCEDURES**

Sec.

902.1 Purpose and authority.

902.2 Raising disputes.

902.3 Referral to Dispute Resolution Committee.



- 902.4 Action by Council Chairman.
- 902.5 Hearing procedures.
- 902.6 Appeal to the Attorney General.
- 902.7 Court action.

**Authority:** 42 U.S.C. 14616

## **PART 902--DISPUTE ADJUDICATION PROCEDURES**

### **§902.1 Purpose and authority.**

The purpose of Part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

### **§902.2 Raising disputes.**

(a) Cognizable disputes ~~must be raised by a Party State, the FBI, or a person, organization, or government entity directly aggrieved within the meaning of paragraph (b) of this section~~ and may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) **Only a** ~~A~~ Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Section 902.2(a)(4), **may raise a cognizable dispute. Such disputants** may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a

disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

**§902.3 Referral to Dispute Resolution Committee.**

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute. In the case when the Compact Council Chairman is the committee member with the conflict, the Chairman shall take appropriate steps to appoint a replacement that resolves the conflict.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) ~~In making a decision as to whether to recommend a hearing, the~~ The Dispute Resolution Committee shall ~~lean toward recommending~~ hearings to all disputants who raise issues that are not clearly frivolous or without merit. If

the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under §902.2(a);

or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

**§902.4 Action by Council Chairman.**

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the ~~Federal Bureau of Investigation or a Party State~~ disputant may appeal this decision to the Attorney General. ~~pursuant to Section (c) of Article XI of the Compact (see §902.6).~~ If the Attorney General believes the disputant has raised an issue that is not frivolous or without merit, the Attorney General shall may order the Compact Council Chairman to grant a hearing.

(c) If a hearing is granted, the Chairman shall:

- (1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;
- (2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under §902.5 (Hearing Procedures); and
- (3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

**§902.5 Hearing procedures.**

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of §902.2(a)(4) shall be entitled to:

- (1) File additional written materials with the Council at least ten days prior to the hearing;
- (2) Appear at the hearing, in person and/or by

counsel;

(3) Make an oral presentation; and

(4) Call and cross-examine witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

**(e) All Council members, ~~including~~ except a member ~~or members~~ who raised the dispute that is the subject of the hearing or is employed by the agency that raised the dispute, shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.** *(Note: paragraph (e) language to be further discussed.)*

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and, as necessary, ~~shall be transcribed, as necessary~~. A ~~record of the proceedings~~ transcript of the hearing will be made and ~~provided~~ forwarded to the Attorney General if an

appeal is filed pursuant to Section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws Section 8.8) and voting at the hearing. The Council's decision on the dispute shall be published in the Federal Register as provided by Section (a)(2) of Article XI and Section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by Section (c) of Article XI of the Compact.

**§902.6 Appeal to the Attorney General.**

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to Section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

BILLING CODE: 4410-02

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 905

[Docket No. NCPPC 103] (103 is the correct number)

~~RIN~~

Compact Council Procedures for Compliant Conduct and  
Responsible Use of the Interstate Identification Index  
(III) System for Noncriminal Justice Purposes

**AGENCY:** National Crime Prevention and Privacy Compact  
Council

**ACTION:** Proposed rule.

**SUMMARY:** The Compact Council, established pursuant to the  
National Crime Prevention and Privacy Compact (Compact), is  
publishing a rule proposing to establish a procedure for  
ensuring compliant conduct and responsible use of the  
Interstate Identification Index (III) System for  
noncriminal justice purposes as authorized by Article VI of  
the Compact.

**DATES:** Submit comments on or before [INSERT DATE 30 DAYS  
AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send all written comments concerning this  
proposed rule to the Compact Council Office, 1000 Custer  
Hollow Road, Module C3, Clarksburg, WV 26306; Attention:

~~Cathy L. Morrison~~ Todd C. Commodore. Comments may also be



submitted by fax at (304) 625-5388 or by electronic mail at [cmorriso@leo.gov](mailto:cmorriso@leo.gov) [tcommodo@leo.gov](mailto:tcommodo@leo.gov). To ensure proper handling, please reference "Compliant Conduct and Responsible Use of the Interstate Identification Index (III) for Noncriminal Justice Procedures" on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Uzzell, Compact Council Sanctions Committee Chairman, Florida Department of Law Enforcement, 2331 Philips Road, Tallahassee, FL 32308-5333, telephone number (850) 410-7100.

**SUPPLEMENTARY INFORMATION:** The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611-14616, establishes uniform rules, procedures, and standards for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999, when ratified by the second state. The Compact provides for the expeditious provision of Federal and State criminal history records to governmental and nongovernmental agencies that use such records for noncriminal justice purposes authorized by pertinent Federal and State law, while simultaneously enhancing the accuracy of the records and safeguarding the

information contained therein from unauthorized disclosure or use.

To carry out its responsibilities under the Compact, the Compact Council is authorized under Article III and Article VI to establish and adhere to III System rules, procedures, and standards concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection and other aspects of III System operation for noncriminal justice purposes. Access to records is conditional upon the submission of the subject's fingerprints or other **approved** forms of positive identification with the record check request as set forth in Article V of the Compact. Further, any record obtained under the Compact may be used only for the official purposes for which the record was requested.

Article III(a) of the Compact requires the Director of the FBI to appoint a Compact Officer (herein referred to as the FBI Compact Officer) to administer the Compact within the Department of Justice (DOJ) and among Federal agencies and other agencies and organizations that submit search requests to the FBI and to ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with by DOJ and other Federal agencies and other agencies and organizations. Article III(b) requires each

Party State to appoint a Compact Officer (herein referred to as the State Compact Officer) who shall administer the Compact within the state, ensure that Compact provisions and Compact Council rules, procedures, and standards are complied with, and regulate the in-state use of records received by means of the III System from the FBI or from other Party States.

**BACKGROUND:**

**Pursuant to Articles VI and XI respectively, the Compact Council has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes as well as has the initial authority to make determination with respect to any dispute regarding interpretation of the Compact, any rule or standard established by the Compact Council pursuant to Article V of the Compact, and any dispute or controversy between any parties to the Compact. Therefore, the Compact Council may impose sanctions against agencies that do not operate in accordance with the Compact and rules and procedures promulgated by the Compact Council.**

The Compact Council is establishing this rule to protect and enhance the accuracy and privacy of III System records, to ensure that only authorized access to records is permitted, and to ensure that records are used and

disseminated only for particular authorized noncriminal justice purposes. The procedures established by the rule will be used in determining compliant conduct and responsible use of III System records and in addressing any violations that may be detected.

This rule acts as public notice that unauthorized access to the III System for noncriminal justice purposes or misuse of records obtained by means of the system for such purposes may result in the imposition of sanctions by the Compact Council, which may include the suspension of noncriminal justice access to the III System should the violation be found egregious or constitute a serious risk to the integrity of the System.

**The Compact requires the FBI Director to appoint an FBI Compact Officer to ensure that federal agencies comply with rules, procedures, and standards established by the Compact Council but does not directly address the FBI's responsibility to ensure state compliance. The Act adopting the Compact, however, provides that all United States departments and agencies shall enforce the Compact and cooperate with one another and with all Party States in enforcing the Compact and effectuating its purposes. Pursuant to this direction and authority, the FBI has agreed to also conduct audits of state users Criminal**

**Justice Information Services (CJIS) Division has agreed to regularly conduct systematic compliance reviews of state repositories and selected agencies of the III for compliance with the Compact and Compact Council rules.**

~~Pursuant to the rule, the FBI Criminal Justice Information Services (CJIS) Division staff will regularly conduct systematic compliance reviews of state repositories and selected user agencies. An independent audit team will be established by the Compact Council~~

**The Compact Council will establish the audit team and audit methodology that**

**will be used** to conduct periodic reviews of the FBI and agencies that submit record check requests to the FBI under federal authority. The Compact Council and its Sanctions Committee intend to work in concert with the CJIS Advisory Policy Board's (APB) Ad Hoc Sanctions Subcommittee to examine findings from FBI CJIS Division staff reviews and determine the proper arbiter over the sanctions process for each finding or instance of violation. The APB will continue to serve in its role as an advisor to the FBI, which has exclusive jurisdiction in matters regarding the use of the III System for criminal justice purposes. This advisory capacity includes recommending sanctions to the FBI Director related to violations by criminal justice agencies using the III System for criminal justice

purposes. If it is determined that a sanction should be imposed on a criminal justice agency for misusing the III System for a noncriminal justice purpose, the Compact Council will request that the Director of the FBI take appropriate action.

In determining applicable actions or sanctions for noncompliance with Compact provisions or Compact Council rules, the Compact Council shall take into consideration: (1) any meritorious, unusual or aggravating circumstances which affect the seriousness of the violation; (2) circumstances that could not reasonably have been foreseen by the FBI, state repository, user agency, or others; and (3) the nature and seriousness of the violation, including whether it was intentional, technical, inadvertent, committed maliciously, committed for gain, or repetitive. A pattern or practice of noncompliance by an agency may be grounds for the imposition of sanctions. The Compact Council may evaluate relevant documentary evidence available from any source.

If, as a result of a compliance review or on the basis of other credible information, the Compact Council determines that an agency is not operating in accordance with the Compact and applicable rules, procedures, and standards, prompt notice will be given of the nature of the

noncompliance and the possible consequences of failure to take effective corrective action. A concerted effort will be made to persuade the agency to comply voluntarily. Efforts to secure voluntary compliance will be undertaken at the outset in every noncompliance situation and will be pursued through each stage of corrective action. However, where a noncompliant agency fails to provide adequate assurance of compliance or apparently breaches the terms of such assurance, the Compact Council will ~~impose sanctions or require~~ **take the appropriate actions which could include imposing sanctions or requiring** corrective action necessary to ensure compliance. The Compact Council will be flexible in determining what corrective actions or sanctions are appropriate and generally will require the minimal action or impose the least severe sanction necessary to ensure compliance and deter violations.

#### **Administrative Procedures and Executive Orders**

##### *Administrative Procedures Act*

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal-state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local

governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes.

The Compact Council is not a federal agency as defined in the Administrative Procedures Act. Accordingly, rulemaking by the Compact Council pursuant to the Compact is not subject to the Act. However, the Compact specifically provides that the Compact Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Compact Council shall be published in the Federal Register. See 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

*Executive Order 12866*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

*Executive Order 13132*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable.



Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

*Executive Order 12988*

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

*Unfunded Mandates Reform Act*

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Compact Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

**List of Subjects in 28 CFR Part 905**

~~Privacy, Accounting (02, 08), see also Auditing~~

**Privacy, Accounting, Auditing**

For the reasons set forth above, the National Crime Prevention and Privacy Compact Council proposes to reserve parts 903 and 904 and add part 905 to chapter IX of title 28 Code of Federal Regulations to read as follows:

**PART 905-- COMPACT COUNCIL PROCEDURES FOR COMPLIANT CONDUCT  
AND RESPONSIBLE USE OF THE INTERSTATE IDENTIFICATION INDEX  
(III) SYSTEM FOR NONCRIMINAL JUSTICE PURPOSES**

Sec.

905.1 Purpose and authority.

905.2 Applicability.

905.3 Assessing compliance.

905.4 Methodology for resolving noncompliance.

905.5 Sanction adjudication.

**Sec. 905.1 Purpose and authority.**

The purpose of this part 905 is to establish policies and procedures to insure that use of the III System for noncriminal justice purposes complies with the Compact and with rules, standards, and procedures established by the Compact Council regarding application and response procedures, record dissemination and use, response times, data quality, system security, accuracy, privacy

protection, and other aspects of III System operation for noncriminal justice purposes. The rule is established pursuant to Article VI of the Compact, which authorizes the Compact Council to promulgate rules, procedures, and standards governing the use of the III System for noncriminal justice purposes. The rule seeks to require responsible authorized access to the system and use of records obtained by means of the system. It provides a comprehensive procedure for a coordinated compliance effort between the Compact Council, the FBI, and local, state and federal government agencies, and encourages the cooperation of all affected parties.

**Sec. 905.2 Applicability.**

This rule applies to access to the III System for noncriminal justice purposes and the use of information obtained by means of the system for such purposes. The rule establishes procedures for ensuring that the FBI and the criminal history record repositories of Compact Party States carry out their responsibilities under the Compact, as set out in the National Fingerprint File (NFF) Qualification Requirements, and that federal, state and local agencies that use the III System for noncriminal justice purposes comply with the Compact and with applicable Compact Council rules.

### **Sec. 905.3 Assessing Compliance.**

(a) The FBI CJIS Division staff shall regularly conduct systematic compliance reviews of state repositories. These reviews may include, as necessary, reviews of III System user agencies, including governmental and nongovernmental noncriminal justice entities that submit fingerprints to the state repositories and criminal justice and noncriminal justice entities with direct access to the III System. ~~An independent audit team shall periodically review the FBI.~~ These reviews may include, as necessary, the governmental and nongovernmental noncriminal justice agencies authorized to submit fingerprints directly to the FBI.

The reviews may consist of systematic analyses and evaluations, including on-site investigations, and shall be as comprehensive as necessary ~~to establish compliance with the Compact and with III System rules, procedures and standards, or to establish that a violation has occurred.~~ **to adequately ensure compliance with the Compact and Compact Council rules.** Violations may also be reported or detected independently of a review.

(b) The FBI CJIS Division staff or the ~~independent~~ audit team established to review the FBI shall prepare a draft report describing the nature and results of each

review and setting out all findings of compliance and noncompliance, including any reasons for noncompliance and the circumstances surrounding the noncompliance. If the agency under review is the FBI or another federal agency, the draft report shall be forwarded to the FBI Compact Officer. If the agency under review is a state agency in a Party State, the draft report shall be forwarded to the State Compact Officer. If the agency under review is a state agency in a Nonparty State, the draft report shall be forwarded to the chief administrator of the state repository.

(c) The Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State shall be afforded the opportunity to forward comments and supporting materials to the FBI CJIS Division staff or to the ~~independent~~ audit team.

(d) The FBI CJIS Division staff or the ~~independent~~ audit team shall review any comments and materials received and shall incorporate applicable revisions into a final report. The final report shall be provided to the Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State to whom the draft report was sent. If the agency under review is a state agency, a copy of the report shall be

provided to the FBI Compact Officer. If the agency under review is being reviewed for the first time, the letter transmitting the report shall state that no action will be taken regarding any deficiencies set out in the report, but that the deficiencies must be remedied before the agency is reviewed again and failure to do so will result in the initiation of remedial action pursuant to section 905.4.

**Sec. 905.4 Methodology for resolving noncompliance.**

(a) Subsequent to each compliance review that is not a first-time agency review, the final report shall be forwarded to the Compact Council Sanctions Committee (Sanctions Committee). The Sanctions Committee shall review the report and, if it concludes that no violations occurred that are serious enough to require further action, it shall so advise the Compact Council Chairman. The Compact Council Chairman shall write a letter to this effect to the FBI or Party State Compact Officer or the chief administrator of the state repository in a Nonparty State. If the agency under review is a state agency, a copy of the letter shall be provided to the FBI Compact Officer.

(b) Should the Sanctions Committee conclude that a violation has occurred that is serious enough to require redress, the Committee shall recommend to the Compact

Council a course of action necessary to bring the offending agency into compliance and provide assurances that minimize the probability that subsequent violations will occur. In making its recommendation, the Sanctions Committee shall consider the minimal action necessary to insure compliance or shall explain why corrective action is not required. This may include but not be limited to, requiring a plan of action by the offending agency to achieve compliance, with benchmarks and performance measures, and/or requiring the agency to seek technical assistance to identify sources of the problem and proposed resolutions. If the Compact Council approves the Committee's recommendations, the following progressive actions shall be initiated:

(1) The Compact Council Chairman shall send a letter to the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State identifying the violations and setting out the actions necessary to come into compliance. The letter shall state that if compliance is not achieved and assurances provided that minimize the probability that subsequent violations will occur, and non-compliance is not excused, the Compact Council may authorize the FBI to refuse to process requests for criminal history record searches for noncriminal justice purposes from the

offending agency and, if the offending agency is a criminal justice agency, may request the Director of the FBI to take appropriate action against the agency consistent with the recommendations of the Council. The letter shall direct the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State to submit a response in writing to the Compact Council Chairman within 30 calendar days from the date of the letter, unless the Compact Council requires a more expeditious response. If the agency under review is a state agency, a copy of the Compact Council Chairman's letter shall be provided to the FBI Compact Officer.

The response letter shall outline a course of action to be undertaken by the offending agency to correct the deficiencies and provide assurances that minimize the probability that subsequent violations will occur. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(2) If the Sanctions Committee deems the response to the letter under Subsection (b)(1) to be insufficient, or if no response is received within the allotted time, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, it shall direct the Compact Council Chairman to send a



letter to the Director of the FBI (if the agency under review is the FBI or another federal agency) or to the head of the state agency in which the state repository resides (if the agency under review is a state agency), requesting assistance in correcting the deficiencies. The letter shall state that the agency is being placed on probationary status. A copy of the letter shall be sent to the Compact Officer of the FBI or Party State or the chief administrator of the state repository in a Nonparty State. If the agency under review is a state agency, a copy of the letter shall be provided to the FBI Compact Officer.

A response to the letter shall be required within 20 calendar days from the date of the letter, unless the Compact Council requires a more expeditious response. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(3) If the Sanctions Committee deems the response under Subsection (b)(2) to be insufficient, or if no response is received within the allotted time, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, it shall direct the Compact Council Chairman to send a letter to the U. S. Attorney General (if the agency under review is the FBI or another federal agency) or to the

elected state official who has oversight of the department in which the state repository resides (if the agency under review is a state agency), requesting assistance in correcting the deficiencies. If the elected state official is not the Governor, a copy of the letter shall be sent to the Governor. A copy of the letter shall also be sent to the FBI Compact Officer and (if the agency under review is a state agency) to the State Compact Officer or the chief administrator of the state repository in a Nonparty State. The letter shall state that a response is required within 20 calendar days of the date of the letter, and that if a sufficient response is not received within that time, sanctions may be imposed that could result in suspension of the offending agency's access to the III System for noncriminal justice purposes. The Compact Council Chairman shall refer the response to the Sanctions Committee for appropriate action.

(4) If no response is received under Subsection (b)(3) within the allotted time, or if the Committee deems the response to be insufficient, the Committee shall report its finding to the Compact Council. If the Compact Council agrees with the Committee's finding, ~~it shall direct~~ the Compact Council Chairman ~~to request~~ **shall direct** the FBI Compact Officer to take appropriate action to suspend

noncriminal justice access to the III System by the offending agency. If the offending agency is a criminal justice agency, the Compact Council Chairman shall request the Director of the FBI to take appropriate action to suspend noncriminal justice access to the III System by the agency.

(5) Reinstatement of full service by the FBI shall occur after the Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State provides to the Compact Council Chairman and the Sanctions Committee satisfactory documentation that the deficiencies have been corrected or a process has been initiated and approved by the Compact Council Chairman and the Sanctions Committee to correct the deficiencies. If the Committee approves the documentation in consultation with the Compact Council Chairman, the Compact Council Chairman shall request the FBI Compact Officer to take appropriate action to reinstate full service. Letters to this effect shall be sent to all persons who have previously received letters relating to the deficiencies and resulting suspension of service. The decision to reinstate full service shall be considered for ratification by the Compact Council at its next regularly scheduled meeting.

(C) For good cause, the Compact Council Chairman shall be authorized to extend the number of days allowed for the responses required by Subsections (b)(1-3) of this Section.

**Sec. 905.5 Sanction adjudication.**

A Compact Officer of the FBI or a Party State or the chief administrator of the state repository in a Nonparty State may dispute a sanction under this Part by asking the Compact Council Chairman for an opportunity to address the Compact Council.

~~The Compact Council may refer unresolved disputes concerning such matters to the Dispute Adjudication Committee pursuant to Article XI of the Compact.~~

**Unresolved disputes based on the Compact Council's issuance of sanctions under this Part may be referred to the Dispute Adjudication Committee only if they meet the definitions of allowable disputes as authorized under Article XI of the Compact.**

Nothing prohibits the Compact Council from requesting the FBI to exercise immediate and necessary action to preserve the integrity of the III System pursuant to Article XI(b) of the Compact.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Wilbur Rehmann

Compact Council Chairman

# Hazmat Background Check Program Status

John Berry  
Hazmat Program Manager  
TSA Credentialing Program Office



Transportation  
Security  
Administration

October 3, 2003

## TSA Hazmat Program

### Agenda

- Program Update
- Key Issues: Technical
- Key Issues: Procedural
- Key Issues: Information Sharing
- Next Steps



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Hazmat Program Update

# Program Update

## Hazmat Progress

- Funding:
  - Department of Homeland Security Appropriations (H.R. 2555)
    - Fee Authority
      - TSA regulatory guidance & justification of costs required)
    - Existing Contract Support Extended
- TSA Operations:
  - Established Working Groups (WG)
    - Regulatory
    - Technical
  - Identified Biographical and Fingerprint Procedure Issues
  - Reviewing Waiver and Adjudication Process
  - Implementation Planning Ongoing



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Hazmat Program Update

# Key Issues: Technical

## Technical Considerations

- Finalize Appropriate Data Sources
- Determine Data Content, Formats and Submission
- Implement System
  - Establish Data Routing (Gateway)
  - Install Systems
  - Develop Interfaces
- Develop Appropriate Notification Methods



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## Key Issues: Procedural

### Waiver and Adjudication Process

- Addressing Waiver and Adjudication Issues
  - Developing Standards for Consistency
  - Refining Process for Timely Response



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Hazmat Program Update

## Key Issues: Information Sharing

### Data Sharing

- Retention of Criminal History Records
  - Who Keeps Data and How Long?
- Additional Data Needed
- Sharing and Updating Records
  - States
  - Federal /TSA
  - Other Agencies



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## Next Steps

### Next Steps

- Receive Additional Stakeholder Input
- Refine and Select Optimum Data Sources
- Finalize Implementation Timelines & Approach
- Implement Phases for Background Checks
  - Phase One: Begin Biographical Data Checks
  - Phase Two: Select States to Test Fingerprint
  - Phase Three: Launch Fingerprint Checks Nationwide



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# **FBI NFF Audit Methodology**

## **Performance Audit**

- a. Economy/efficiency Audits - determines if an entity is acquiring, protecting, and using resources economically and efficiently. This determines if the entity has complied with the laws or regulations governing the usage.
- b. Program Audits - determines the extent to which the desired results of benefits established by a legislature or other authorizing body is being achieved.

A Performance/Program Audit will be used when conducting the audit of the FBI combining elements of both types of audits mentioned above. A Performance/Program Audit is an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of any organization or program.

### **A. Audit Objective(s)**

The purpose of the audit is to assess the FBI's compliance with NFF Qualification requirements as approved by the National Crime Prevention and Privacy Compact Council and the Advisory Policy Board.

Goals or scope will cover the following area(s):

- C Assess whether the objectives of the ongoing program are proper, suitable, and relevant.
- C Determine the extent to which the program achieves the required results.
- C Assess the effectiveness of the program and/or individual program components.
- C Identify factors inhibiting satisfactory performance.
- C Determine whether management has considered alternatives for carrying out the program that might more effectively yield required results.
- C Determine whether the program has duplication, conflicting steps, or ineffective methods.
- C Assess compliance with applicable laws and regulations.
- C Identify ways of making the program work better.

### **B. Background**

The National Crime Prevention and Privacy Compact (42 U.S.C. section 14616) makes the Compact Council responsible for the use, dissemination, and distribution of criminal history record information accessed by the user community for noncriminal justice purposes. The FBI is both a user and distribution point for criminal history information for noncriminal justice purposes. Therefore, an audit will be conducted of the FBI using the following methodology (listed below). A similar methodology is used for audits of state repositories. The same methodology must be used for a consistent and uniform assessment of all that access and use criminal history record information.

The purpose, authority, and responsibility of the audit should be consistent with the *Government Auditing Standards*, approved by the General Accounting Office and with the rules promulgated by the Compact Council. The audit findings should be communicated to the appropriate authority.

## **C. Overview of the Process**

### **1. Preaudit Methodology**

#### **a. Contact Call**

Prior to the date of the audit, contact will be made with the Criminal Justice Information Services (CJIS) Division's Assistant Director in Charge and the chairperson of the National Crime Prevention and Privacy Compact Council to notify them that an FBI NFF audit will be scheduled.

Prior to the date of the audit, contact will be made with the FBI Compact Officer to determine the date of the audit and to give an overview of the audit process. The contact call is to advise the FBI Compact Officer that an audit is being scheduled. During this call, the audit date and time is confirmed with the FBI Compact Officer. Additionally, the FBI Compact Officer is informed that a preaudit questionnaire will be forwarded and a deadline for response is agreed upon.

#### **b. Preaudit Questionnaire**

The preaudit questionnaire is used to assist the auditor in gathering pertinent information prior to the on-site visit. Information gathered in the preaudit questionnaire is used to formulate additional questions to be answered during the on-site visit. Additional preaudit duties include conducting a data quality review (i.e., all rejections, \$A.NMS messages, \$A.CON messages, etc.) and mailing surveys. Information gathered from the data quality review and the surveys are used to validate answers from the preaudit and on-site questionnaires, and to assist in determining policy compliance.

#### **c. Preaudit Data Quality Review**

Prior to the date of the audit, the audit staff will request various reports from the System to effectively measure the FBI's adherence to the FBI NFF Qualifications and other rules promulgated by the Compact Council. Measurements by which to determine compliance are outlined on the auditor's reference sheet which is separate from this document.

#### **d. Preaudit Survey**

Prior to the audit, the audit staff will conduct a survey to document how the states would rate the assistance they receive from the CJIS Division for the following: completing the Interstate Identification Index (III) file synchronization process, fingerprint processing, file maintenance, performance of the FBI Compact Officer, and assistance in becoming an III participating and/or NFF state.

## **2. On-Site Audit**

During the audit, auditors will conduct on-site interviews with the FBI Compact Officer and appropriate CJIS Division sections.

- C Questions asked will assist the auditor in determine the CJIS Division's adherence to policies and procedures for the processing of fingerprint cards and system response. Additional on-site data quality will also be reviewed to support audit findings or lack thereof.

Upon completion of the on-site interviews and data quality review validation, auditors will determine compliance with FBI NFF Qualification requirements.

- C After all interviews and data quality assessments are completed, an exit interview with FBI Compact Officer will be conducted to inform him/her of any compliance issues and to leave copies of appropriate documentation.

## **3. Report**

After the audit, a draft FBI NFF audit report will be completed and forwarded to the FBI Compact Officer for review and comment. The report will include findings from the interviews with appropriate CJIS sections and the data quality validation/verification along with any recommendations.

## **4. FBI Compact Officer Response**

The FBI Compact Officer will be requested to review the report findings, respond to recommendations (if any), and if required, provide a time line of corrective actions.

The FBI Compact Officer's response will be incorporated into the Executive Summary of the report. Once the response has been added to the report, a final report will be prepared and sent to the FBI Compact Officer.

## **5. Sanctions**

The auditors will provide a final report and comments from the FBI Compact Officer to the National Crime Prevention and Privacy Compact Sanctions Committee and the Advisory Policy Board's Sanctions Subcommittee for their respective review and appropriate action.

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT  
COMPACT COUNCIL MEETING  
ALEXANDRIA, VIRGINIA  
OCTOBER 2-3, 2003**

**STAFF PAPER**

**TOPIC #8**

Legislative Update - as of September 15, 2003

**PURPOSE**

To provide an overview of enacted and pending federal legislation, introduced in the 108th Congress, that may have an impact on the CJIS Division and its user community.

**AUTHOR**

Melody Ferrell, Access Integrity Unit

**108th CONGRESS ENACTED LEGISLATION**

**Keeping Children and Families Safe Act of 2003**

On June 25, 2003, the President signed Public Law 108-36 (formerly HR 14 and S 342). Section 114 of the bill provides that, not later than 2 years after the enactment of this Act, those states obtaining grants for child abuse and neglect prevention and treatment programs have provisions and procedures in place for requiring criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household. The law does not state how these background checks will be conducted.

**The "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003"**

On April 30, 2003, the President signed Public Law 108-21 (formerly S 151). A brief description of the sections relevant to the CJIS Division follows:

**Section 108** (42 U.S.C. § 5119a Note) establishes the State Pilot Program and the Child Safety Pilot Program for an 18-month period with three designated volunteer organizations (the Boys and Girls Clubs of America, the National Mentoring Partnership, and the National Council of Youth Sports). Under both programs the FBI may charge up to an \$18 fee for the fingerprint submissions. The CJIS Division has worked extensively with the National Center for Missing and Exploited Children (NCMEC) and the three designated non-profit volunteer organizations (NPOs) to establish procedures and the programs have been implemented. Due to the time frame that it has taken for the NPOs to establish procedures and begin receiving the fingerprint cards, the first fingerprint submission was not received until September 10, 2003.

**Section 108** also directs that a feasibility study be conducted by the Attorney General within 180 days (Oct. 27, 2003) to discern, among other things, the number of volunteers, employees, and others that would require background checks; the impact of IAFIS capacity; fees charged by the FBI, state and local agencies, and private companies to process fingerprints and conduct background checks; as well as the feasibility of private companies to capture and transmit fingerprints and make fitness determinations. The various models that are being used for the pilot programs will enable the FBI to collect and compare pertinent data for this study. The FBI is working with the Department of Justice and SEARCH regarding this study.

**Section 204** amended 42 U.S.C. § 5779(a) by changing the upper limit of entering missing children into NCIC from age 18 to age 21.

**Section 301** implements the **AMBER Alert Program** which requires the Attorney General to assign an office of the DOJ to act as a national coordinator of the AMBER Alert network to facilitate in the recovery of abducted children. The coordinator would notify and consult with the FBI concerning each child abduction.

**Section 604** creates a national Internet site that would link all state Internet sites concerning registered sex offenders.

**Section 605** requires that persons convicted of the production or distribution of child pornography register as sex offenders.

**PROPOSED LEGISLATION**  
**108TH CONGRESS - 1st Session**

**Note:** An asterisk \* indicates CJIS has provided comments.  
All bills are "In Committee" unless otherwise indicated.

Updates are noted in **BOLD** type.

Categories are as follows:

Airports/Seaports, Background Checks, DNA, Hate Crime, Uniform Crime Report, NICS/Brady Related Matters, & Miscellaneous

### **AIRPORTS/SEAPORTS**

Bill Name: Aviation Biometric Badge Act  
Designation: HR 115  
Sponsor: Joel Hefley (R-CO) 01/07/2003  
Cosponsor: 1-D, 5-R (as of 09/10/2003)

Would require that each security screener or employee who has unescorted access or may permit other individuals to have unescorted access to an aircraft or secured area of an airport, be issued a biometric security badge that identifies a person by fingerprint or retinal recognition.

Bill Name: Anti-Terrorism and Port Security Act of 2003  
Designation: HR 2376  
Sponsor: Juanita Millender-McDonald (D-CA) 6/5/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Section 108 would require the Attorney General to issue regulations to require the reporting by carriers who are victims of cargo theft offenses. The AG would establish a database to contain the reports.

Bill Name: Port Security Improvements Act of 2003  
Designation: HR 2193  
Sponsor: Douglas Ose (R-CA) 5/21/2003  
Cosponsor: 23-D, 6-R (as of 09/10/2003)

Would enhance port security by conducting background checks for those individuals issued transportation security cards.

## **BACKGROUND CHECKS**

Bill Name: Compassion and Personal Responsibility Act  
Designation: S 5  
Sponsor: Jim Talent (R-MO) 2/14/2003  
Cosponsor: 1-D, 8 R ( as of 09/10/2003)

Would require that applicants who receive benefits under the food stamp program, SSI, or cash benefits under the unemployment compensation law, be compared against the FBI database to determine if the applicant is a wanted felon.

Bill Name: Comprehensive Homeland Security Act of 2003  
Designation: S 6  
Sponsor: Thomas A. Daschel (D-SD) 01/07/03  
Cosponsor: 19-D, 0-R (as of 09/10/2003)

Would require criminal and security background checks on employees and prospective employees of a sensitive nuclear facility to be updated periodically.

Bill Name: Medicare Fraud Prevention and Enforcement Act of 2003  
Designation: HR 18  
Sponsor: Judy Bigger (R-IL) 01/07/03  
Cosponsor: 0-D, 1-R (as of 09/10/2003)

Amends the Social Security Act to require a background check, which would include a check of criminal records, on any individual or entity that applies for a Medicare provider number.

Bill Name: - - - -  
Designation: HR 78  
Sponsor: Sheila Jackson-Lee (D-TX) 01/07/03  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Previously introduced in the 107th Congress as HR 72. Would amend the Social Security Act to require hospitals reimbursed under the Medicare system to establish security procedures which includes procedures for identifying infant patients. Methods of identification may include the following: footprint, fingerprint, photograph, written description of the infant, or an identification bracelet or anklet put on the newborn or the mother.

Bill Name: Nuclear Security Act of 2003  
Designation: S 131  
Sponsor: Harry Reid (D-NV) 1/9/2003  
Cosponsor: 4-D, 0-R (as of 09/10/2003)

Would establish a task force on nuclear infrastructure security that would examine the protection of sensitive nuclear facilities from terrorist threats. The task force would also coordinate federal resources to expedite and improve the process of performing background checks on employees with access to these facilities.

Bill Name: Nuclear Infrastructure Security Act of 2003  
Designation: HR 2708  
Sponsor: Jim Saxton (R-NJ) as of 7/10/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

House version of S. 131.

Bill Name: Chemical Security Act of 2003  
Designation: S 157  
Sponsor: Jon Corzine (D-NJ) 1/14/2003  
Cosponsor: 10-D, 0-R (as of 09/10/2003)

Would require measures to protect the public by increasing the security of a chemical source, as defined by the Clean Air Act, to include employee training and background checks.

Bill Name: Chemical Facilities Security Act of 2003  
Designation: S 994  
Sponsor: James M. Inhofe (R-OK) 5/5/2003  
Cosponsor: 1-D, 0-R (as of 09/10/2003)

Another version of S. 157.

Bill Name: Chemical Security Act  
Designation: HR 1861  
Sponsor: Frank Pallone (D-NJ) 4/29/2003  
Cosponsor: 10-D, 0-R (as of 09/10/2003)

House version of S. 157



**Bill Name:** Chemical Facility Security Act of 2003  
**Designation:** HR 2901  
**Sponsor:** Vito J. Fossella, Jr. (R-NY) 7/25/2003  
**Cosponsor:** 0-D, 0-R (as of 9/10/2003)

**House version of S. 157 & S. 994.**

Bill Name: - - - -  
Designation: S 208  
Sponsor: Olympia J. Snowe (R-ME) 01/23/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require the Under Secretary for Border and Transportation Security to implement a plan to ensure cargo security for all cargo entering the United States or cargo moving in intrastate or interstate. Would require background checks on cargo handlers.

Bill Name: Senior Safety Protection Act of 2003  
Designation: HR 208  
Sponsor: Mike Thompson (D-CA) 01/07/03  
Cosponsor: 15-D, 2-R (as of 09/10/2003)

Previously introduced as HR 5565 in the 107th Congress. Would amend the Social Security Act to require long-term care workers to have state and national criminal background checks conducted by the FBI. No fees may be charged by the state for the state or national background check. Also requires the Secretary of Health & Human Services to establish a more efficient background system for more immediate determination of criminal status.

Bill Name: - - - - \*  
Designation: S 236  
Sponsor: Bill Nelson (D-FL) 01/29/03  
Cosponsor: 2-D, 2-R (as of 09/10/2003)

Would require background checks of alien flight school applicants without regard to the maximum weight of the aircraft.

Bill Name: Dirty Bomb Prevention Act of 2003  
Designation: S 350  
Sponsor: Hillary Clinton (D-NY) 02/11/2003  
Cosponsor: 1-D, 1-R (as of 09/10/2003)

Would amend the Atomic Energy Act of 1954 to strengthen the security of radioactive material by conducting background checks on individuals with access to sensitive radioactive material.

Bill Name: Dirty Bomb Prevention Act  
Designation: HR 891  
Sponsor: Carolyn McCarthy (D-NY) 2/25/2003  
Cosponsor: 5-D, 0-R (as of 09/10/2003)

House version of S. 350.

Bill Name: Elder Justice Act  
Designation: S 333  
Sponsor: John Breaux (D-LA) 2/10/2003  
Cosponsor: 16-D, 11-R (as of 09/10/2003)

Would require fingerprint background checks on skilled nursing facility workers. A nursing facility worker is defined as any individual, except a volunteer, that has access to a patient of a nursing facility and who is under employment or contract with the facility. A fee may be charged, but may not exceed \$50.

Bill Name: Elder Justice Act  
Designation: HR 2490  
Sponsor: Rahm Emanuel (D-IL) 6/17/2003  
Cosponsor: 38-D, 13-R (as of 09/10/2003)

Section 102 would require a national criminal background check on skilled nursing facility workers. House version of S. 333.

Bill Name: - - - -  
Designation: HR 364  
Sponsor: Darlene Hooley (D-OR) 01/27/03  
Cosponsor: 4-D, 0-R (as of 09/10/2003)

Previously introduced in the 107th Congress as HR 453. Would amend the Social Security Act to require background checks on drivers providing Medicaid medical assistance transportation services.

Bill Name: Domestic Consumer Safety Act of 2003  
Designation: HR 439  
Sponsor: Robert E. Andrews (D-NJ) 01/29/03  
Cosponsor: 2-D, 0-R (as of 09/10/2003)

Would require the Federal Trade Commission to make rules to ensure that businesses create a system of background checks for certain workers who enter people's homes.

Bill Name: Private Security Officer Employment Authorization Act of 2003\*  
Designation: S 769  
Sponsor: Carl M. Levin (D-MI) 04/02/2003  
Cosponsor: 2-D, 2-R (as of 09/10/2003)

Previously introduced in 107th Congress as S 2238. Would permit fingerprints to be submitted through state identification bureaus to the FBI for a background check. A state may decline to participate in the background check system by enacting a law or issuing an order by the Governor.

Bill Name: Responsible Lending Act  
Designation: HR 833  
Sponsor: Robert W. Ney (R-OH)  
Cosponsor: 4-D, 9-R (as of 09/10/2003)

Section 301 would require background checks to be conducted on mortgage brokers unless the state had a uniform law which required a background check.

Bill Name: Patient Abuse Prevention Act  
Designation: S 958  
Sponsor: Herb Kohl (D-WI)  
Cosponsor: 8-D, 0-R (as of 09/10/2003)

Would require a national background check of nursing facility workers and a report to Congress two years after the enactment.

Bill Name: Foster Care Mentoring Act of 2003  
Designation: HR 1401  
Sponsor: Juanita Millender-McDonald (D-CA) 3/20/2003  
Cosponsor: 12-D, 0-R (as of 09/10/2003)

Previously introduced in the 107th Congress as S 3057 and HR 5696. To receive grants to establish or operate programs using public and private community entities to mentor children in foster care, states must conduct criminal background checks on the mentors.

Bill Name: Foster Care Mentoring Act of 2003  
Designation: S 1419  
Sponsor: Mary Landrieu (D-LA) 7/16/2003  
Cosponsor: 9-D, 0-R (as of 09/10/2003)

S. Version of HR 1401.

Bill Name: Federal Facilities Locksmith Services Act of 2003  
Designation: HR 1407  
Sponsor: Peter A. Session (R-TX) 3/20/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require locksmiths at executive and judicial branch facilities to undergo state and national criminal history background checks.

Bill Name: Nuclear Infrastructure Security Act of 2003  
Designation: S 1043  
Sponsor: James M. Inhofe (R-OK) 5/12/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require licensees or applicants for radioactive materials to have fingerprint background checks.

**Bill Name:** International Marriage Broker Regulation Act of 2003  
**Designation:** S 1455  
**Sponsor:** Maria Cantwell (D-WA) 7/25/2003  
**Cosponsor:** 0-D, 0-R (as of 9/10/2003)

**Would require that clients of an international marriage broker have a criminal background check conducted to inform a potential spouse of prior arrests, domestic violence, etc. The visa petitioner would also be required to undergo a national criminal background check.**

**Bill Name:** Energy Policy Act of 2003  
**Designation:** HR 1644  
**Sponsor:** Joe L. Barton (R-TX) 4/7/2003  
**Cosponsor:** 0-D, 0-R (as of 09/10/2003)  
**Status:** Reported amended in the House 4/8/2003

**Would require each individual transferring or receiving nuclear materials to be subject to a federal background check.**

**Bill Name:** - - - - -  
**Designation:** HR 1855  
**Sponsor:** Robert E. Andrews (D-NJ) 4/29/2003  
**Cosponsor:** 0-D, 0-R (as of 09/10/2003)

**Would require medicare home health agencies to conduct background checks on all applicants for employment as direct patient care providers.**

**Bill Name:** Camp Safety Act of 2003  
**Designation:** HR 2145  
**Sponsor:** Robert E. Andrews (D-NJ) 5/19/2003  
**Cosponsor:** 0-D, 0-R (as of 09/10/2003)

**Would require that criminal background checks be conducted on all organized camp employees under the Fair Labor Standards Act.**

Bill Name: - - - - -  
Designation: HR 2463  
Sponsor: H. James Saxton (R-NJ) 6/12/2003  
Cosponsor: 1-D, 2-R (as of 09/10/2003)

Would require background checks, including a criminal history check, to be conducted on all Department of Defense contractors. (Note: DOD can currently do a criminal history check through the FBI.)

Bill Name: Indian Child Welfare Act Amendments of 2003  
Designation: HR 2750  
Sponsor: Don Young (R-AK) 7/15/2003  
Cosponsor: 2-D, 1-R (as of 09/10/2003)

Would amend the Indian Child Protection and Family Violence Act to add a requirement under Federal law for background checks in connection with placement in a foster home, institution, or adoptive home.

Bill Name: Small Business Reauthorization and Manufacturing Revitalization Act of 2003  
Designation: HR 2803  
Sponsor: Don Manzullo (R-IL) 7/21/2003  
Cosponsor: 1-D, 0-R (as of 09/10/2003)

Authorizes criminal background check of applicants for a small business loan, to be verified through the best available means, including, if possible, the NCIC System.

### **DNA**

Bill Name: Save Our Children - Stop the Violent Predators Against Children  
DNA Act of 2003  
Designation : HR 89  
Sponsor: Sheila Jackson (D-TX) 01/07/03  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require the Attorney General to establish a DNA database solely for the purpose of collecting DNA information with respect to violent predators. Authorizes \$500,000 to be appropriated to establish the database.

## **HATE CRIME**

Bill Name: Equal Rights and Equal Dignity for Americans Act of 2003  
Designation: S 16  
Sponsor: Thomas A. Daschle (D-SD) 01/07/03  
Cosponsor: 27-D, 0-R (as of 09/10/2003)

Section 109 of the bill would amend the Hate Crime Statistics Act by adding gender as a data category.

Bill Name: Hate Crime Statistics Improvement Act of 2003  
Designation: HR 374  
Sponsor: Carolyn Maloney (D-NY) 1/27/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would amend the Hate Crime Statistics Act to require the Attorney General to acquire data about crimes that manifest evidence of prejudice based on gender.

Bill Name: Local Law Enforcement Enhancement Act of 2003  
Designation: S 966  
Sponsor: Edward M. Kennedy (D-MA) 5/1/2003  
Cosponsor: 41-D, 7-R (as of 09/10/2003)

Senate version of HR 374.

## **UNIFORM CRIME REPORT**

Bill Name: Violence Against Children Act of 2003  
Designation: S 1123  
Sponsor: Barbara Boxer (D-CA) 5/22/2003  
Cosponsor: 1-D, 0-R (as of 09/10/2003)

Would require states that receive grants to prosecute crimes against children, test or develop protocols to use the National Incident-Based Reporting System (NIBRS).

## **NICS/BRADY RELATED MATTERS**

Bill Name: Justice Enhancement and Domestic Security Act of 2003  
Designation: S 22  
Sponsor: Thomas A. Daschle (D-SD) 01/07/03  
Cosponsor: 13-D, 0-R (as of 09/10/2003)

**Section 5201**, previously introduced as HR 4757 and S 2826 as **Our Lady of Peace Act**, would require the USINS to provide all relevant records of persons disqualified from acquiring firearms. This would include illegal aliens, visitors to the U.S. on student visas, and visitors to the U.S. on tourist visas. Would also require states to provide name and relevant identifying information to the AG on those committed to mental institutions for inclusion in the NICS Index. **Section 5205** authorizes the Attorney General to make grants to states for building databases that are directly related to NICS checks, assist the states in establishing or enhancing their capacities to perform NICS checks, improve final dispositions of criminal records, supply mental health records to NICS, and supply court-ordered domestic restraining orders to NICS. **Section 5206** would require the Director of the Bureau of Justice Statistics to study and evaluate the operations of NICS. **Section 5214** would require the establishment of a computer system through which state and local law enforcement agencies could promptly access ballistics records. **Section 5251** would regulate the transfer of firearms at gun shows.

Bill Name: Bullet Tracing Act to Reduce Gun Violence  
Designation: HR 24  
Sponsor: Xavier Becerra (D-CA) 01/07/03  
Cosponsor: 9-D, 0-R (as of 09/10/2003)

Would require that a licensed manufacturer or licensed importer shall not transfer a firearm to any person before testing the firearm; preparing ballistics records of the fired bullet and cartridge casings from the test fire; and transmitting the records to the Attorney General. The AG would compile, in electronic format, the ballistics records and make the compilation available for use in federal, state, and local criminal investigations, arrests, indictments, and prosecutions.



Bill Name: Project Exile Safe Streets and Neighborhoods Act of 2003  
Designation: HR 54  
Sponsor: Ander Crenshaw (R-FL) 01/07/03  
Cosponsor: 3-D, 24-R (as of 09/10/2003)

Would base firearm sentencing grants to the states on a demonstration that the state has implemented a firearm sentencing law. The amount of the grant allocated to the eligible state would be based on the ratio of Part I violent crimes reported to the FBI for the 3 years preceding the year the determination is made.

Bill Name: Handgun Licensing and Registration Act of 2003  
Designation: HR 124  
Sponsor: Rush Holt (D-NJ) 1/7/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require the Attorney General to establish a Federal system for the licensing and registration of all handguns owned, possessed, or controlled in the United States, except when the state has a system for licensing and registration of handguns.

Bill Name: Second Amendment Rights Protection Act of 2003  
Designation: HR 193  
Sponsor: Joel Hefley (R-CO) 01/07/03  
Cosponsor: 2-D, 10-R (as of 09/10/2003)

Would amend Title 18, United States Code to protect the Second Amendment rights of citizens by requiring the immediate destruction of information on persons who have been determined to not be prohibited from owning a firearm.

Bill Name: Anti-Gunning Act of 2003  
Designation: HR 221  
Sponsor: Robert Wexler (D-FL) 01/07/03  
Cosponsor: 36-D, 0-R (as of 09/10/2003)

Would make it unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer 2 or more handguns to a single person in a 30-day period, or to an individual believed to have received more than 1 handgun in the previous 30 days. The licensee must notify NICS within 3 days of any background check that did not result in the transfer of a handgun.

Bill Name: Gun Show Background Check Act of 2003  
Designation: HR 260  
Sponsor: John Conyers (D-MI) 01/08/03  
Cosponsor: 48-D, 0-R (as of 09/10/2003)

Would extend NICS background checks to gun shows. Gun show promoters must also verify the identify of each gun show vendor prior to the show and must register with the Secretary of the Treasury.

Bill Name: States' Rights and Second and Tenth Amendment Restoration Act of 2003  
Designation: HR 276  
Sponsor: Virgil Goode (R-VA) 1/8/2003  
Cosponsor: 0-D, 9-R (as of 09/10/2003)

Would repeal the Lautenberg Amendment which prohibits someone from possessing a firearm if convicted of a misdemeanor domestic violence crime.

Bill Name: Leave No Child Behind Act of 2003  
Designation: HR 936  
Sponsor: George Miller (D-CA)  
Cosponsor: 65-D, 0-R (as of 09/10/2003)

Section 11001 would require background checks to be conducted on all vendors at gun shows, as well as on the transfer of the weapons; all persons operating gun shows must register with the Attorney General and verify the identity of each gun show vendor.

Bill Name: Leave No Child Behind Act of 2003  
Designation: S 448  
Sponsor: Chris Dodd (D-CT) 2/26/2003  
Cosponsor: 9-D, 0-R (as of 09/10/2003)

Senate version of HR 936.

Bill Name: Technological Resource to Assist Criminal Enforcement Act (TRACE Act)  
Designation: S 469  
Sponsor: Herb Kohl (D-WI) 2/27/2003  
Cosponsor: 6-D, 1-R (as of 09/10/2003)

Would require the Attorney General to establish an electronic database through which state and local law enforcement agencies can promptly access ballistics records.

Bill Name: Technological Resource to Assist Criminal Enforcement Act (TRACE Act)  
Designation: HR 776  
Sponsor: Robert E. Andrews (D-NJ) 2/13/2003  
Cosponsor: 11-D, 0-R (as of 09/10/2003)

House version of S. 469.

Bill Name: Handgun Licensing Act of 2003  
Designation: HR 899  
Sponsor: Jerrold L. Nadler (D-NY) 2/25/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would require that a name and fingerprint-based background check be conducted before a handgun license is issued to an applicant.

Bill Name: Homeland Security Gun Safety Act of 2003  
Designation: S 969  
Sponsor: Frank Lautenberg (D-NJ) 5/1/2003  
Cosponsor: 3-D, 0-R (as of 09/10/2003)

Would require licensed importers, dealers, and collectors to check the Stolen Gun File of the NCIC prior to purchasing a firearm. If listed in the Stolen Gun File, it shall be reported to the NCIC, the BATF, and local law enforcement.

Bill Name: Iris Scan Security Act of 2003  
Designation: HR 1171  
Sponsor: Robert E Andrews (D-NJ) 3/11/2003  
Cosponsor: 0-D, 0-R (as of 09/10/2003)

Would provide grants to law enforcement agencies to use iris scanning technology to conduct background checks on individuals who want to purchase guns.

Bill Name: District of Columbia Personal Protection Act  
Designation: S 1414  
Sponsor: Orrin G. Hatch (R-UT) 7/15/2003  
Cosponsor: 1-D, 23-R (as of 09/10/2003)

Would restore Second Amendment rights in the District by repealing the handgun ban, handgun ammunition ban, and criminal penalties for unregistered firearms.

Bill Name: Domestic Violence Victim Protection Act  
Designation: HR 1895  
Sponsor: Steve Rothman (D-NJ) 4/30/2003  
Cosponsor: 23-D, 0-R (as of 09/10/2003)

The Attorney General would provide grants to states or local units of governments to hire and maintain additional personnel for entering protection orders. A court may also provide, as part of the relief of the protection order, that the defendant is prohibited from possessing any firearm or weapon.

Bill Name: Assault Weapons Ban and Law Enforcement Protection Act of 2003  
Designation: HR 2038  
Sponsor: Carolyn McCarthy (D-NY) 5/8/2003  
Cosponsor: 97-D, 2-R (as of 09/10/2003)

Would require background checks for the transfer of lawfully possessed semiautomatic assault weapons. The AG shall establish and maintain a record of any semiautomatic assault weapons which has been used in a crime.

Bill Name: Assault Weapons Ban and Law Enforcement Protection Act of 2003  
Designation: S 1431  
Sponsor: Frank Lautenberg (D-NJ) 7/17/2003  
Cosponsor: 3-D, 0-R (as of 09/10/2003)

Senate version of HR 2038.

**Bill Name: Detectives Nemorin and Andrews Anti-Gun Trafficking Act of 2003**  
**Designation: HR 2946**  
**Sponsor: Peter T. King (R-NY) 7/25/2003**  
**Cosponsor: 1-D, 0-R (as of 9/10/2003)**

**Would mandate that the FBI provide access to the NCIC Gun File for purposes of allowing BATF to trace a gun. Within 2 years of the enactment, all FFLs enrolled in NICS would be able to conduct a search of the NCIC Gun File prior to accepting as security for a loan a firearm from an unlicensed person.**

#### **MISCELLANEOUS**

Bill Name: Clear Your Good Name Act  
Designation: HR 1009  
Sponsor: Jerrold L. Nadler (D-NY) 2/27/2003  
Cosponsor: 3-D, 0-R (as of 09/10/2003)

Was previously introduced as HR 1154 in the 107th Congress. Would require a federal law enforcement agency to expunge an arrest, including fingerprints and photographs, not later than 30 days after the arrest becomes a voidable arrest. A voidable arrest would include 1) the release of the person without filing of formal charges; 2) the dismissal of proceedings against the person; or 3) a determination that an arrest was without probable cause.

Bill Name: Prevention and Recovery of Missing Children Act  
Designation: S 1102  
Sponsor: Chris Dodd (D-CT) 5/21/2003  
Cosponsor: 0-D, 2-R (as of 09/10/2003)

Would ensure that no law enforcement agency or state could require the removal of a missing child from the NCIC Missing Person File based solely on age. Would also

require fingerprints, a photograph, and a DNA sample be given by all sex offenders for registration purposes. Individuals who fail to comply with registration and verification requirements would be guilty of a felony.

**Bill Name:** Citizens' Protection in Federal Databases Act  
**Designation:** S 1484  
**Sponsor:** Ron Wyden (D-OR) (7/29/03)  
**Cosponsor:** 0-D, 0-R ( as of 9/10/03)

**Would require the Attorney General and the FBI, along with other federal agencies, to submit a report containing detail descriptions of any use of a database that (1) is under the control of a non-Federal entity or (2) information that was acquired by another federal agency for purposes other than national security, intelligence, or law enforcement. No department, agency, or federal employee may conduct a search based on a hypothetical scenario that someone may commit a crime or pose a threat to national security. A "database" is defined as a collection of information including an individual's name, identifying number, or other specific identifiers such as fingerprints, photographs, voice prints, or biometrics.**

**Bill Name:** Second Chance for Ex-offenders Act of 2003  
**Designation:** HR 1434  
**Sponsor:** Charles B. Rangel (D-NY) 3/25/2003  
**Cosponsor:** 0-D, 0-R (as of 09/10/2003)

Previously introduced in the 107th Congress as HR 696. Would permit expungement of a federal record for certain nonviolent offenses upon the satisfaction of certain conditions.

**Bill Name:** Schools Safely Acquiring Faculty Excellence Act of 2003  
**Designation:** HR 2649  
**Sponsor:** Jon C. Porter (R-NV) 6/26/2003  
**Cosponsor:** 0-D, 2-R (as of 09/10/2003)

Would prohibit the Secretary of Education from making DOE program funds available to a state unless it has a criminal information sharing system. This system would share with the federal government (FBI) each felony arrest, charge, and conviction involving violence, controlled substance, child abuse, statutory rape, rape, molestation, or sexual abuse for the 15 years prior to enactment of this Act.

Bill Name: Clear Act of 2003  
Designation: HR 2671  
Sponsor: Charles W. Norwood (R-GA) 7/9/2003  
Cosponsor: 5-D, 82-R (as of 09/10/2003)

Section 104 of the bill would require entry of immigration violators in the NCIC. Title 28, Section 534(a) would be amended to read "(4) acquire, collect, classify, and preserve records of violations of immigration laws of the United States; and".

Any questions regarding the Legislative Update may be addressed to Melody Ferrell of the Access Integrity Unit (AIU) at (304) 625-2865.

The Legislative Update may also be accessed by going to the **AIU LEO Website**:

1. LEOSIGS
2. Public SIGS
3. CJIS-
4. General Information
5. Access Integrity Unit Information
6. News
7. Legislative Update

# PROTECT ACT

## Status Report

## Establishment of Protect Act

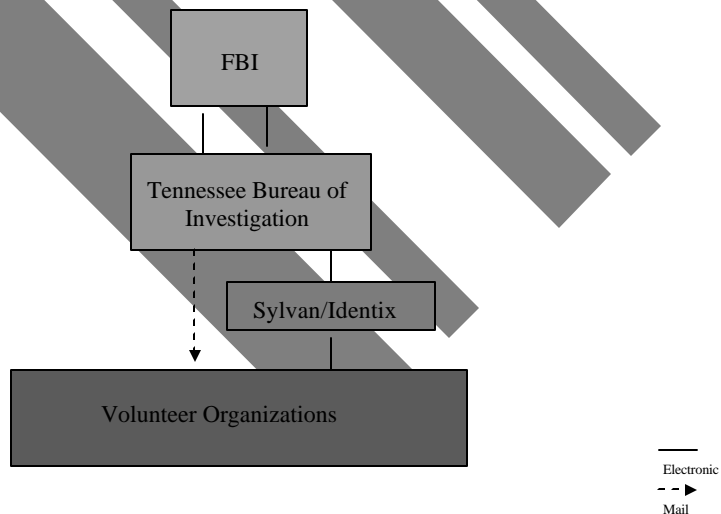
- President signed the “Protect Act” into law on April 30, 2003
- In General -
  - The Attorney General shall establish a pilot program for volunteer groups to obtain national and state criminal history background checks through a fingerprint check to be conducted utilizing State criminal records and the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation.
    - » Pilot Programs consists of State Pilot Program and Child Safety Pilot Program
    - » Pilot Programs were established on July 29, 2003

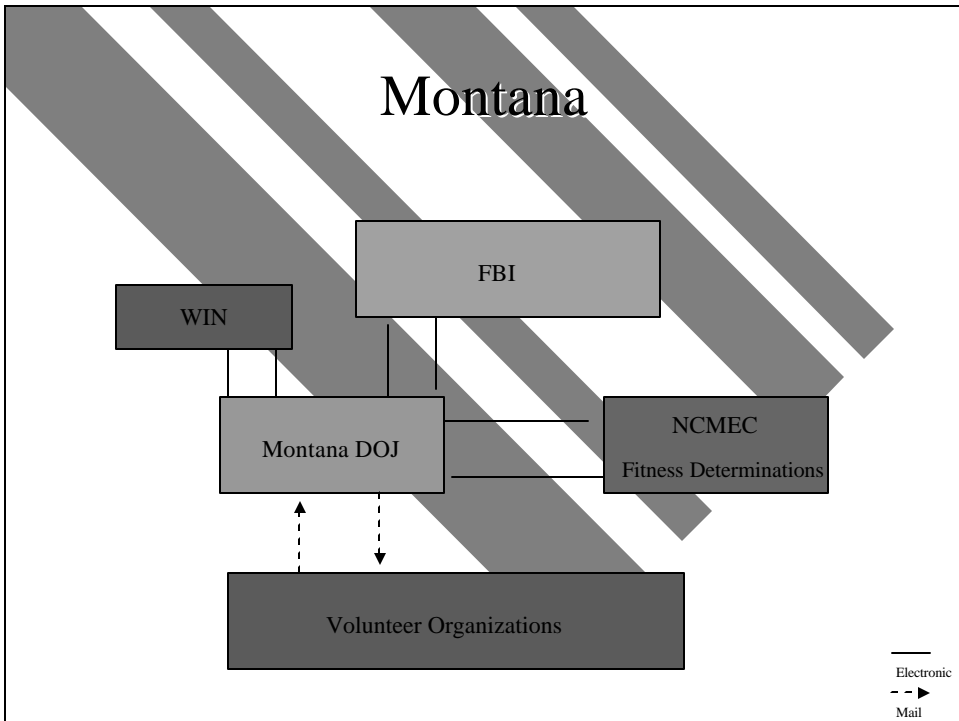
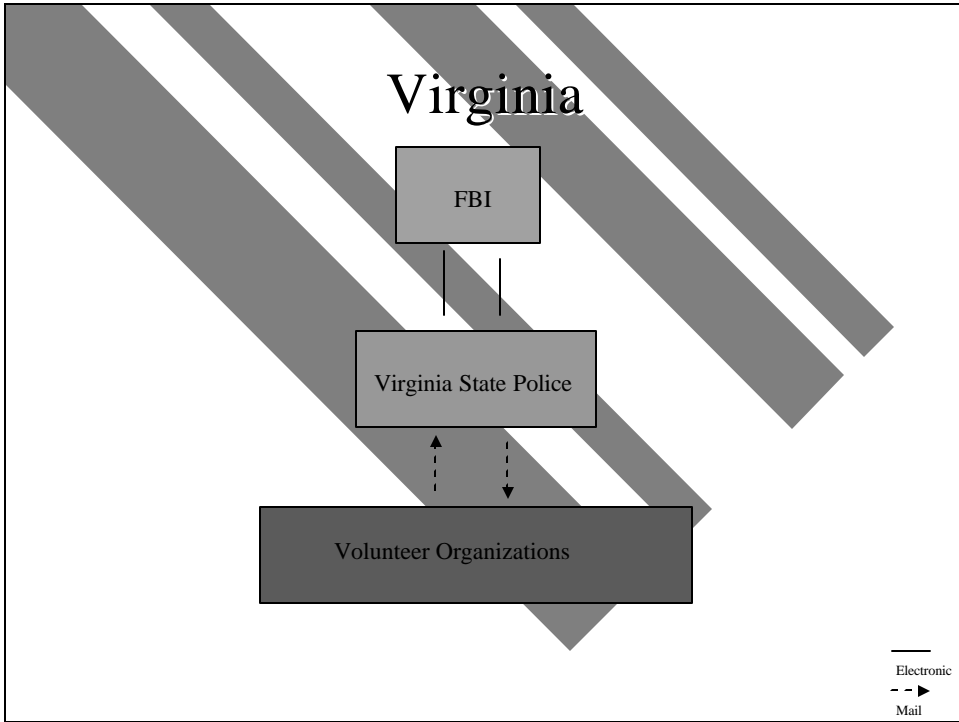


## State Pilot Program

- Three organizations were designated by the Act to participate in the pilot program
  - Boys and Girls Clubs of America
  - National Mentoring Partnerships
  - National Council of Youth Sports
- Three states were selected by the FBI to participate in the 18-month pilot program.
  - Tennessee
  - Virginia
  - Montana

## Tennessee

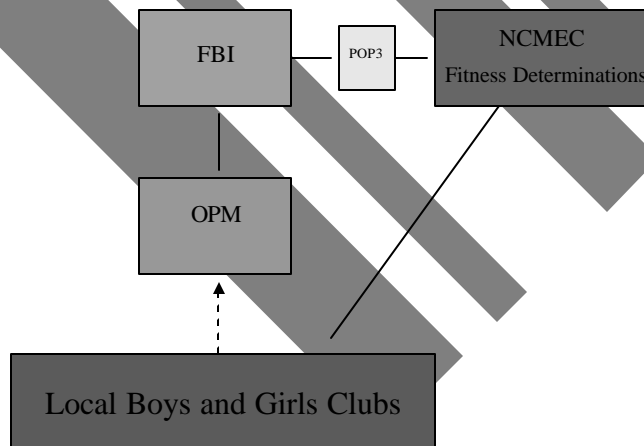




## Child Safety Pilot Program

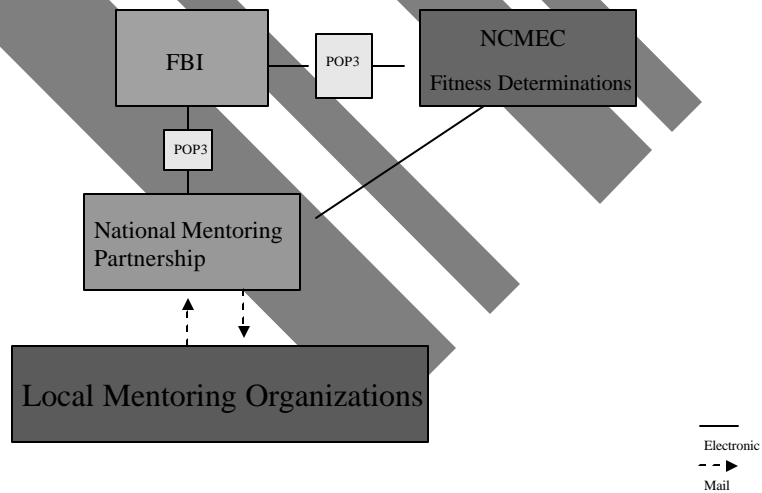
- The Child Safety Pilot Program provides for the processing of 100,000 fingerprint check requests through the IAFIS of the FBI.
- The following number of background checks have been allotted to the volunteer organizations:
  - » 33,334 for the Boys and Girls Clubs of America
  - » 33,333 for the National Mentoring Partnership
  - » 33,333 for the National Council of Youth Sports

## Boys and Girls Clubs of America

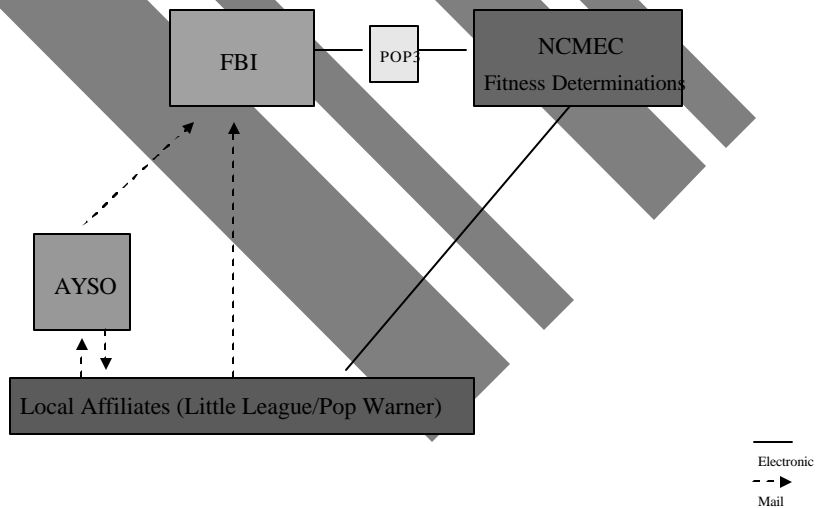


— Electronic  
- - - Mail

# National Mentoring Partnership



# National Council of Youth Sports



## Fitness Criteria

- All felonies
- Any lesser crime which sexual relations is an element (including pornography)
- Any lesser crime involving cruelty against animals
- Any lesser crime involving controlled substances (including DUIs which may involve drugs)
- Any lesser crime involving force or threat of force against a person.

## Rights of Volunteers

- The Act entitles each volunteer to contact the Attorney General to –
  - Obtain a copy of their criminal history record report; and
  - Challenge the accuracy and completeness of the criminal history record information in the report
- Each volunteer will be able to submit a release to the FBI and request that a copy of their criminal history record be sent to the volunteer organization or themselves

## Performance Measures

- Cost
  - Fees
- Timeliness
  - Date Fingerprinted to Date of Response
- Quality
  - Rejects/Reason for rejection
- Effectiveness
  - Number of criminal history background checks performed
  - Number of applicants rendered unfit to provide care to children

## Research and Analysis

- Comparison of state and national criminal history record information
- Evaluation of fitness criteria
- Civil Applicant Study
- Evaluation of Public/Private Source Databases

## Feasibility Study

- The Attorney General shall conduct a feasibility to examine to the extent discernible the following information:
  - The current state of fingerprint capture and processing at the state and local level, including the current available infrastructure, state system capacities, and the time for each state to process a civil or volunteer fingerprint from the time of capture to submission to the FBI.
  - The intent of states concerning participation in a nationwide system of criminal background checks to provide information to qualified entities.

## Feasibility Study

- The number of volunteers, employees, and other individuals that would require a fingerprint based criminal background check.
- The impact on the IAFIS in terms of capacity and impact on other users of the system, include the effect on FBI work practices and staffing levels.
- The current fees charged by the FBI, states, local agencies, and private companies to process fingerprints and conduct background checks.
- The existence of “model” or best practice programs which could easily be expanded and duplicated in other states.

## Feasibility Study

- The extent to which private companies are currently performing background checks and the possibility of using private companies in the future to perform any of the background check process.
- The cost of development and operation of the technology and the infrastructure necessary to establish a nationwide fingerprint-based and other criminal background check system.
- The extent of state participation in the NCPA/VCA.
- The extent to which states provide access to nationwide criminal history background checks to organizations that serve children.

## Feasibility Study

- The extent to which states currently permit volunteers to appeal adverse fitness determinations, and whether similar procedures are required at the Federal level.
- The implementation of the two pilot programs.
- Any privacy concerns that may arise from nationwide criminal background check requests.



## Interim Report

- Based on the findings of the feasibility study, the Attorney General shall submit to Congress an Interim Report, which may include recommendations for a pilot project to develop or improve programs to collect fingerprints and perform background checks on individuals that seek to volunteer with organizations that work with children, the elderly or the disabled.

## Questions?

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